



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: July 10, 2018
TO: James Holgersson, Interim City Manager
FROM: Susan Hsieh, Finance Director
SUBJECT: Direction On Potential Revenue Measures For The November 2018 Election

RECOMMENDATION

Staff requests that the City Council provide direction and comments regarding potential revenue measures after receiving a presentation from City staff and consultants.

BACKGROUND

At its December 19, 2017 Study Session, the City Council directed staff to place a \$50 million housing bond and a \$10 million parks bond on the June 2018 ballot; and to place a cannabis tax measure on the November 2018 ballot. The Council also directed staff to further explore potential parking tax and parcel tax measures for November 2018. At its February 6, 2018 meeting, the City Council directed that only a single bond measure, a housing bond, be placed on the June 2018 election.

On January 16, 2018, staff advised the Council that our consultant, EMC Research, would be conducting a public opinion poll in June 2018, and that the poll would help us determine the viability of other revenue measures. Over the last several months, the Revenue Task Force, consisting of Mayor Bauters and Council Member Martinez, along with staff, worked closely with our consultants to identify potential revenue options and to develop a survey to gain understanding of the community's priorities.

The team evaluated five revenue options including a cannabis tax, a parks bond, a parking tax, a parcel tax, and a sales tax. The intention of the sales tax would be to support the Emeryville Child Development Center. Questions regarding a parcel tax, cannabis tax, and sales tax were included in the final survey.

As stated above, the parks bond and parking tax were included on the list of potential revenue options. After further evaluation, the team concluded that the City may use Park Impact fees to support park-related projects and currently there are no large projects planned, obviating the need for a parks bond at this time. The City is planning to implement a Parking Management Program that will better manage street parking, and to develop a system that can better meet the needs of residents and businesses. The parking tax mentioned earlier was also intended to support this purpose. Thus, a parks bond and parking tax were not included in the final survey because other funding solutions were identified for these projects.

When evaluating the revenue options, key factors such as the needs of the community and potential impacts on residents and businesses were taken into consideration. The City also engaged MuniServices to analyze cannabis tax rates/structure, with the goal of developing a cannabis tax that generates revenue while retaining our competitive edge over other area jurisdictions. The report issued by the consultant is attached to this staff report.

The final poll included questions about a parcel tax, sales tax, and cannabis tax. This staff report presents the poll results, cannabis tax analysis, and the November 2018 election timeline. Staff will seek direction from the City Council regarding potential revenue measures following the consultant team's presentation.

DISCUSSION

Overview

The following three revenue options/questions were included in the community survey:

- **Parcel Tax:** To protect the safety of Emeryville residents by increasing neighborhood police patrols and improving crime prevention programs, support local youth services by expanding afterschool programs, and preserve essential services, shall the City of Emeryville levy fifteen cents per square foot of buildings with an annual cost of living adjustment not to exceed 2.5%, for twelve years, providing approximately \$2.6 million annually, with exemptions for seniors and low-income residents, with locally-controlled funding, and independent citizen oversight and audits?
- **Cannabis Tax:** Shall the City of Emeryville levy an ongoing tax on cannabis businesses operating in the city of up to five percent of gross receipts, providing an estimated \$2 million annually to support regulation of the cannabis industry, and to protect the quality of life in Emeryville by maintaining and improving general city services and basic infrastructure needs such as repairing public facilities, reducing traffic congestion, and improving pedestrian and bicycle safety, with all funds staying in Emeryville?
- **Sales Tax:** To improve education and childcare for infants, toddlers, and preschoolers of Emeryville residents and workers, expand access to preschool for low- and middle-income families, and attract and retain quality childcare workers, shall the City of Emeryville enact up to a quarter cent sales tax generating approximately \$2.2 million annually to fund the Emeryville Child Development Center, with locally-controlled funding, and independent citizen oversight and audits?

Please note that a parcel tax requires a two-thirds vote regardless of whether the revenues are for general purpose or for special purpose. The Cannabis tax is currently structured and was polled as a general tax and requires a simple majority vote. The proposed sales tax is considered a special tax because the revenues are devoted to the

Emeryville Child Development Center, and thus a two-thirds vote is required. The sales tax measure was polled as a special tax.

State law allows cities and counties to impose transactions and use taxes, but prohibits, in any county, the combined rate of all taxes imposed in accordance with Transactions and Use Tax Law from exceeding 2% (California Revenue and Taxation Code, Section 7251.1). Alameda County has already reached this limit. Cities and counties may seek special legislation to increase their jurisdiction's rate and be exempted from the 2% combined rate limit. Emeryville's current sales tax rate is 9.25%, which puts it at the rate cap (7.25% statewide tax rate plus 2% district taxes). If the City wishes to raise its sales tax rate, legislation specifically allowing for Emeryville to raise its rate must be adopted by the State Legislature and signed by the Governor. That process could take up to one year, even if the bill is passed by the Legislature and approved by the Governor. In this scenario, Year 2020 would be the earliest year that a sales tax measure could be placed on the ballot.

Survey Results

EMC conducted 302 telephone and email-to-Web interviews. The survey asked voters about their service priorities and whether they supported the potential tax measures. The key findings are summarized below:

- Emeryville voters continue to be very positive about the quality of life and City government.
- Voters prioritize basic City services such as safety, transportation, parks, and street maintenance.
- A cannabis measure remains viable, while timing for a parcel tax and sales tax should be further considered.

The poll results show strong support for a cannabis tax. Support for a parcel tax is below the 66% required threshold. Support for sales tax measure is above the 66% required threshold but drops below 66% once voters hear potential negative information. (Also, as noted above, our sales tax cap would have to be increased before a sales tax would be a viable option.)

Based on the survey results, our consultants recommend placing the cannabis tax measure on the November 2018 ballot and to evaluate the timing for the parcel tax and sales tax measures for a future election year(s).

Cannabis Tax Rate Analysis

The report prepared by MuniServices covers tax strategy, current market conditions, and tax rates and structures. Our main goal is to develop a long-term strategy for economic development in order to attract and retain high quality, economically viable and long-standing cannabis business partners.

As described in the attached report, the City may impose taxes based on gross receipts or square footage. Gross receipts tax is more universal than other options but can be

impacted by price fluctuations. A square footage-based tax is less impacted by price fluctuations but misses a certain volume of business activities.

The current market conditions reveal a downward pressure on tax rates, including the state excise tax. Overall legal market share is moving away from smokables and toward edibles, vape pens and other extracts. California cannabis taxes are some of the highest in the nation and have resulted in calls for lowering the tax burden on cannabis operators.

MuniServices' report provides tax rate information from other agencies, including the neighboring cities of Oakland and Berkeley. Some jurisdictions impose gross receipt taxes and some impose square footage taxes. Some rates are as low as 1%, and some rates are as high as 20%. Certain cities do not impose taxes on medical, testing, or other cannabis business categories.

MuniServices concluded that keeping taxes in the lower-end of the spectrum may attract California-based and national talent and business investment. The national average is 2 to 6%. Emeryville could consider establishing rates to achieve economic development objectives, including creating an "ecosystem" of supportive, interdependent cannabis businesses. MuniServices recommends setting a maximum rate (e.g., up to 10%), but begin at a lower rate. This approach would give the City flexibility to adjust the rate in the future if needed.

Furthermore, in considering the tax rate for each cannabis business category, it is worth noting that the two storefront dispensaries already financially contribute to the general fund through the community benefits that they offer. Unlike other cannabis businesses, cannabis storefront dispensaries had to compete for a permit from the Police Department ("Operator's Permit"), as required by Chapter 28 of Title 5 of the Emeryville Municipal Code and Resolution Nos. 17-135 and 17-136. The two storefront dispensaries selected contribute an estimated 1-2% of their gross receipts to the City, as required by their Operator's Permit. The purpose behind community benefits is to mitigate or offset some of the adverse impacts that accompany a storefront dispensary. Any tax imposed on cannabis storefront dispensaries should be considered in light of the existing regulatory framework that requires the two storefront dispensaries to provide community benefits. Thus, when considering a tax rate for the storefront dispensaries, the Council should consider whether the cannabis tax rate, plus the community benefits, may result in a financial burden so significant that one or both of the storefront dispensaries would consider seeking relief from the financial burden.

November 2018 Election Timeline

There are important deadlines that must be met in order to place a tax measure on the November 2018 ballot. The following timeline has been developed for the Council's consideration:

Date	Task
July 24, 2018	City Council meeting: Action to approve Resolution(s) and/or first reading and introduction of Ordinance(s) submitting the ballot question(s) for measures
August 3, 2018	City Council Meeting: Second reading and adoption of Ordinance(s), if any
August 10, 2018	Deadline to file Resolution(s)/Ordinance(s) described above with Alameda County Registrar of Voters and Board of Supervisors
August 11, 2018	Volunteer campaign committee starts advocacy for measure(s)
August 27, 2018	Deadline to file Arguments For/Against the Measure
September 27, 2018	First day to mail sample ballots
October 8, 2018	Early Voting begins
October 22, 2018	Close of Voter Registration Period
October 30, 2018	Last day to request a Vote by Mail Ballot
November 6, 2018	Election Day

If the City Council decides to place the cannabis tax measure on the November 2018 ballot, staff will present the draft ordinance and/or resolution to the City Council at its July 24, 2018 meeting and seek adoption on August 3rd. Any other direction provided to staff by the Council will also come back at the July 24th meeting.

With the City Council's support, staff will work with consultants to develop educational materials and conduct community outreach between July and early August. The goal is to develop a public information and outreach program to educate the community about the purpose of the revenue measure and to build broad consensus. A well-organized and transparent community outreach program will enable us to provide information to the public through effective channels. This is an important step in the process toward a successful measure.

It should be noted that the Government Code prohibits the use of public funds by a local agency to advocate approval or rejection of a ballot measure. However, a public agency may expend public funds to educate and inform voters about the consequences of a ballot measure. Only a privately funded campaign committee can advocate for the measure--for example, a community group consisting of volunteers.

FISCAL IMPACT

Costs associated with the November 2018 election and ballot measure development are included in the fiscal year 2018-19 budget.

STAFF COMMUNICATION WITH THE PUBLIC

None.

CONCLUSION

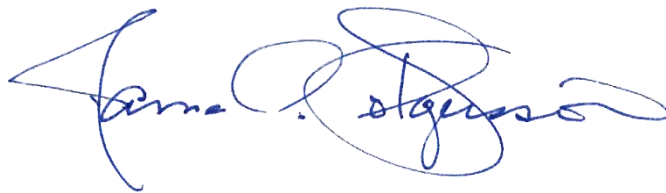
The poll results show strong support for a cannabis tax. Our consultants recommend placing the cannabis tax measure on the November 2018 ballot and to further consider the timing for parcel tax and sales tax measures for future years. With the support of council members, staff will work with the consultants to educate the community about the purpose of the revenue measure.

Staff recommends that the City Council provide direction to staff on the following questions:

1. Does the City Council wish to place a cannabis tax measure on the November 2018 ballot?
2. If the City Council wishes to place a cannabis tax measure on the November ballot, please provide direction regarding tax rate(s)/rate structure for development of the ballot question.
3. Does the City Council wish to consider the parcel tax and sales tax revenue measures for future elections?

PREPARED BY: Susan Hsieh, Finance Director

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



James Holgersson, Interim City Manager

ATTACHMENT:

1. Cannabis Tax Rate Analysis