



City of Huntington Beach

File #: 22-601

MEETING DATE: 7/19/2022

REQUEST FOR CITY COUNCIL ACTION

SUBMITTED TO: Honorable Mayor and City Council Members

SUBMITTED BY: Al Zelinka, City Manager

VIA: Travis K. Hopkins, Assistant City Manager

PREPARED BY: Grace Yoon-Taylor, Senior Administrative Analyst

Subject:

Consider the Adoption of Resolution Nos. 2022-48, 2022-49, 2022-46, and 2022-47 to place Cannabis Business Regulation and Taxation Measures on the November 8, 2022 General Municipal Election Ballot for Voter Approval

Statement of Issue:

On July 5, 2022, the City Council voted to place two City-sponsored measures regarding cannabis business regulation and taxation on the November 8, 2022 General Municipal Election ballot for voter approval. Staff has since prepared ballot measure language for City Council's consideration, as well as four resolutions that are required to place the measures on the ballot:

1. Resolution No. 2022-48 - Order the submission of a (1) general tax measure with ordinance to amend Huntington Beach Municipal Code Chapter 3.25 and (2) advisory measure to regulate commercial cannabis businesses;
2. Resolution No. 2022-49 - Request to place the aforementioned cannabis-related measures on the November General Election ballot;
3. Resolution No. 2022-46 - Set priorities for writing arguments; direct the City Attorney to prepare an impartial analysis for each measure;
4. Resolution No. 2022-47 - Provide for the filing of rebuttal arguments for each measure.

To place these two measures on the November ballot, the City Council must approve the proposed ballot measure language and adopt the four resolutions identified above. Following adoption of the resolutions, the City will prepare an impartial analysis for each measure and gather written arguments and rebuttals - all of which must be submitted to the OC Registrar of Voters (ROV) by the filing deadline of August 12, 2022.

Also on July 5, the City Council provided direction on several key policy areas regarding commercial cannabis business activities via straw votes and directed the Ad Hoc Subcommittee and City staff to continue working towards developing regulatory and zoning ordinances for the City Council's consideration at a future meeting.

Financial Impact:

Per the ROV, the estimated cost to place two measures on the ballot will depend on the number of pages required to present each measure on the ballot at approximately \$8,500 for every 2 pages. Secondary expenses like postage, printing, and cost related with the County's Vote Center model are to be determined by the County, but are already included in a separate budget set aside for the City's regularly scheduled elections for City Council and City Attorney.

The incremental cost of placing two additional ballot measures is estimated to be an additional \$25,000, which is included in the Fiscal Year 2022-23 Budget in General Fund business unit 10040101.

Recommended Action:

A) Consider two proposed cannabis ballot measures (for regulation and taxation) and ballot language for placement on the November 8, 2022 General Municipal Election ballot; and,

B) Adopt Resolution No. 2022-48, "A Resolution of the City Council of the City of Huntington Beach, California, Ordering the Submission to the Qualified Electors of the City of a General Tax Measure for the Submission to the Qualified Voters of a Proposed Ordinance Adding Chapter 3.25 to Title 3 of the Huntington Beach Municipal Code, Establishing a General Tax on Cannabis Businesses Operating within the City of Huntington Beach and an Advisory Measure Regarding the Regulation of the Commercial Cannabis Businesses at the General Election to be held on Tuesday, November 8, 2022, as Called by Resolution No. 2022-39 "; and,

C) Adopt Resolution No. 2022-49, "A Resolution of the City Council of the City of Huntington Beach, California, Adding Two Additional Measures to the Request to the Board of Supervisors of the County of Orange to Consolidate A General Municipal Election to be held on November 8, 2022, with the Statewide General Election to be held on the Date Pursuant to § 10403 of the Elections Code"; and,

D) Adopt Resolution No. 2022-46, "A Resolution of the City Council of the City of Huntington Beach, California, Setting Priorities for Filing Written Arguments and Impartial Analyses Concerning Regulation and Taxation of the Commercial Cannabis Businesses within the City of Huntington Beach"; and,

E) Adopt Resolution No. 2022-47, "A Resolution of the City Council of the City of Huntington Beach, California, Providing for the Filing of Rebuttal Arguments for City Cannabis Regulation and Taxation Measures Submitted at Municipal Elections"; and,

F) Provide any additional direction on commercial cannabis regulatory framework as the Ad Hoc Subcommittee and City staff continue to work on regulatory and land use ordinances.

Alternative Action(s):

Do not approve one or more recommended actions, and direct staff accordingly.

Analysis:**Cannabis Business Regulation Ballot Measure**

If this measure is approved for placement on the November 2022 ballot, Huntington Beach voters will be able to vote on whether retail and commercial cannabis activities should be permitted in Huntington Beach. Based on feedback received from City Council on July 5, 2022, staff has prepared four proposed ballot measure questions (max 75 words each) and requests City Council to consider selecting one for placement on the November ballot.

Please note: Option 1-3 are advisory measures posed to voters that maintain the City Council's ability to develop policies through business and land use ordinances and respond with greater flexibility to evolving State laws and market conditions without necessitating the delay and expense of a municipal election. Option 4 would implement this measure as a proposed amendment to the City Charter under Article VIII. Any future changes to this amendment would require a Charter amendment process and election to implement.

Options	Proposed Ballot Language	Included Provisions (most specific to least)
Advisory Measure Options		
Option 1	"Shall the City of Huntington Beach repeal the City's current ban on commercial cannabis businesses and allow a limited number of cannabis retailers and non-retailers to operate only in permitted areas of Huntington Beach, subject to business and land use regulations by City Council?"	<ul style="list-style-type: none"> • Types (both retailers and non-retailers) • Authority for the City Council discretion for ordinances
Option 2	"Shall the City of Huntington Beach allow up to 10 storefront cannabis retailers, with 20% being dedicated to residents and local business owners, and other cannabis businesses (delivery-only retailer, indoor cultivator, manufacturer, testing lab, and distributor) to operate only in permitted areas of Huntington Beach, and allow the City Council discretion to adopt and amend business and land use ordinances regarding commercial cannabis activities?"	<ul style="list-style-type: none"> • Types (both retailers and non-retailers) • Cap on # of permits for storefront retailers • 20% allocation of local-only permits • Authority for the City Council discretion for ordinances
Option 3	"Shall the City of Huntington Beach allow up to 10 storefront cannabis retailers 1,000 feet away from schools, parks, commercial childcare centers, and youth centers to operate in Commercial Zone and Specific Plan areas, except Downtown and Coastal Overlay Zone; and other cannabis businesses (delivery-only retailer, indoor cultivator, manufacturer, testing lab, and distributor) only in the Industrial Zone, and allow the City Council discretion to adopt ordinances regarding commercial cannabis activities?"	<ul style="list-style-type: none"> • Types (both retailers and non-retailers) • Cap on # of permits for storefront retailers • Location and buffer restrictions for both • Authority for the City Council discretion for ordinances
Charter Amendment Measure Option		

Option 4	“Shall the proposed Amendment to Article VIII of the Charter of the City of Huntington Beach adding Section 806 to permit a limited number of cannabis businesses to operate in specified areas of Huntington Beach, subject to regulation by City Council as set forth in the proposed measure be approved?”	<ul style="list-style-type: none"> Similar to the Measure T: Safe and Sane Fireworks Charter Amendment, if passed, the Charter amendment would permanently authorize commercial cannabis activities, which could only be removed by the City’s electorate.
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If one proposed ballot measure option is selected tonight, it will then be incorporated into its respective resolutions for adoption.

Number of Available Parcels per Buffer Distances

At the July 5, 2022 meeting, a 1,000 ft. buffer from high and middle schools and all other sensitive receptors (parks, commercial licensed childcare centers, and youth centers) was presented for both retailers and non-retailers. The majority of the Council, via a straw vote, expressed an interest in increasing the buffer to 1,000 ft. for all schools and sensitive receptors for storefront retailers. This increase in the buffer would reduce the number of eligible parcels from 491 to 278 for storefront retail (dispensaries). However, it would not impact the number of available parcels for delivery-only retailers (type 9) and non-retailers, which would remain the same at 555.

To assist the City Council’s decision on the proposed ballot measure language options, especially for Option 1 which includes buffer parameters, the following chart with additional data is presented below. Additionally, GIS maps showing geographic locations of permitted areas are attached for your consideration.

	Previous Proposal		July 5 Council’s Direction	
	Buffer Distances	# of Available Parcels	Buffer Distances	# of Available Parcels
Storefront Retailers (Commercial Zone & Specific Plans)	1,000 ft. from middle high schools 600 ft. from K-5 600 ft. from parks 600 ft. from commercial licensed daycare centers 600 ft. from youth centers	491 <i>*Refer to Attachment 5</i>	1,000 ft. from schools 1,000 ft. from parks 1,000 ft. from commercial licensed daycare centers 1,000 ft. from youth centers	278 <i>*Refer to Attachment 6</i>
Delivery-only Retailers (Type 9) & Non-Retailers (Industrial Zones)	Same as above.	555 <i>*Refer to Attachment 7</i>	No Change	555 <i>*Refer to Attachment 7</i>

Cannabis businesses would not be allowed to operate until the City adopts regulatory and land use ordinances and administrative regulations/processes for permitting, including adoption of fees (for 100% cost recovery). Establishment of such ordinances will enable Huntington Beach residents,

businesses, and community stakeholders to provide testimony through duly noticed public hearings.

Cannabis Business Tax Ballot Measure

If approved, the Cannabis Business Tax Ballot Measure would mirror Measure A: Cannabis Business Tax from the June 7, 2022 Primary Election. However, it would be presented as a General Tax, instead of a Special Tax. As a General Tax, the revenue will go to the General Fund for any general municipal services, as approved by the City Council allocation during the annual budgeting process. Such expenditures could include but are not limited to police, fire, parks, and homeless and behavioral health services.

The proposed tax rates would remain the same as Measure A:

- Up to 1% for non-retailers (indoor cultivation, manufacturing, testing laboratory, and distribution) and;
- Up to 6% for retailers (both storefront and delivery) and;
- Not-to-exceed local excise taxes will allow flexibility for the City Council to adjust tax rates between minimum and maximum voter-approved rates for each type of cannabis businesses to address new emerging market conditions.

Government Code Section 53724 requiring a resolution calling for a General Tax to be placed on a general municipal election must be adopted by 2/3 of the City Council. To be approved and adopted, the General Tax measure must be approved by a majority of voters.

Proposed Ballot Language for Council consideration (max 75 words, YES/NO):

Proposed Ballot Language	Included
"Shall the City adopt an Ordinance that taxes cannabis businesses up to 6% of gross receipts for retailers and up to 1% of gross receipts for all other cannabis businesses if they were to be permitted in the City; which is expected to generate an estimated \$300,000 to \$600,000 annually to fund general municipal services for Huntington Beach and will be levied until repealed by the voters?"	<ul style="list-style-type: none"> • Maximum two separate tax rates for retailers and non-retailers • Estimated annual tax revenue • Purpose of fund use

The proposal included in the Ordinance (Resolution No. 2022-48, Exhibit A) combines business tax rate and implementation concepts from the other agencies surveyed, but is premised on ensuring that all cannabis-related businesses contribute tax revenue to the community. The proposed Ordinance establishes tax rates regardless of the outcome of the ballot measure regarding allowing cannabis-related businesses to operate in Huntington Beach or future City Council actions that may be taken to establish business and land use regulations.

Direct Arguments For or Against Two Measures, Impartial Analysis, & Rebuttals

The attached Resolutions include a proposed ballot question and deadlines to submit direct arguments by 7/29/2022 and rebuttal arguments by 8/08/2022; it also directs the City Attorney to draft and submit an impartial analysis of the measure by 7/29/2022.

City Council as a whole, or any member(s) authorized by the City Council may submit ballot arguments, for or against the measure(s) pursuant to Elections Code section 9281 and 9282. If the motion moves forward, the Council may consider adopting a motion designating an Ad Hoc

Subcommittee to draft an argument on its behalf, or designating specific Council Members to draft an argument under their names. In the event such a Council authorized argument is not prepared, individual voters (including Council Members) can submit an argument, and a priority is set forth by Election Code Section 9287 to be applied by the City Clerk in selecting the ballot argument to use (only one may be used.)

Environmental Status:

Not applicable.

Strategic Plan Goal:

Economic Development & Housing

Attachment(s):

1. Resolution No. 2022-48
2. Resolution No. 2022-49
3. Resolution No. 2022-46
4. Resolution No. 2022-47
5. GIS Map A-1. Storefront Retailers with primarily 600 ft. buffers from sensitive uses
6. GIS Map A-2. Storefront Retailers with 1,000 ft. buffers from sensitive uses
7. GIS Map B. Non-Retailers and Type 9 Retailers