

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE S

Medical cannabis dispensaries in Berkeley are currently taxed at the rate applicable to all retail businesses, or \$1.20 per \$1000 of the prior year's gross receipts. This measure would authorize the City Council to increase the tax rate on medical cannabis businesses to \$25 per \$1000 of gross receipts. The tax would be phased in over two years, with a rate of \$18 per \$1000 of gross receipts for the last six months of 2010 payable in 2011, and \$25 per \$1000 of gross receipts in 2011, payable in 2012. If the "Regulate, Control and Tax Cannabis Act of 2010", on the November 2010 state ballot passes the rate would stay at \$18 per \$1000.

If non-medical cannabis businesses are allowed by the "Regulate, Control and Tax Cannabis Act of 2010", on the November 2010 state ballot, they would be taxed at the rate of \$100 per \$1000 of gross receipts.

If a cannabis business (whether medical or non-medical) were to obtain formal non-profit status from the state or federal governments, it would be taxed based on the number of square feet it occupies rather than gross receipts. The square foot rate would be capped at \$25 per square foot for the first 3,000 square feet, and \$10 per square foot for all square feet over 3,000. These rate caps would be reduced to \$12.50 and \$5.00, respectively, if the "Regulate, Control and Tax Cannabis Act of 2010", on the November 2010 state ballot passes and takes effect. All square foot rates could be increased annually by the greater of the increase in the cost of living in the immediate San Francisco Bay Area or *per capita* personal income growth in the state, as verified by official United States Bureau of Labor statistics.

The Council could impose any tax authorized by this measure at a lower rate, as well as and exempt Cannabis Businesses from the tax if they have gross receipts below a specified amount.

The Council would also be authorized to adopt different tax rates for medical and non-medical cannabis businesses.

This measure would increase the City's appropriations limit by the aggregate sum authorized to be levied for each of the four fiscal years FY 2012 through FY 2015.

This measure does not legalize cannabis businesses, but only taxes businesses that are otherwise permitted.

Financial Implications

Based on current reported gross receipts, it is anticipated that the gross receipts tax on medical cannabis businesses would raise in excess of \$165,000 in 2011 and \$460,000 in 2012 and subsequent years, depending on gross receipts. It is impossible to anticipate the amount of tax proceeds this would raise if non-medical cannabis businesses if they are legalized by the "Regulate, Control and Tax Cannabis Act of 2010", on the November 2010 state ballot and permitted in Berkeley.

Based on the square feet occupied by existing reported medical cannabis businesses in Berkeley, the square foot tax would raise approximately \$159,655, subject to annual inflation.

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