



# City of San Leandro

Meeting Date: July 18, 2016

## Staff Report

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**File Number:** 16-364

**Agenda Section:** ACTION ITEMS

**Agenda Number:** 10.C

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Chris Zapata  
City Manager

**FINANCE REVIEW:** Not Applicable

**TITLE:** Staff Report for City Council Consideration of Placing Three Ballot Measures on the November 2016 Ballot Asking Voters to Authorize New General Fund Revenue

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### SUMMARY AND RECOMMENDATIONS

The City Manager recommends that the City Council:

- 1) By motion, adopt by two-thirds vote the attached resolution placing a measure on the November 8, 2016 ballot asking San Leandro voters to levy an ongoing tax of up to 10% of gross receipts on cannabis businesses in the City
- 2) By motion, adopt by two-thirds vote the attached resolution asking San Leandro voters to authorize a modification of the ongoing business license tax to reduce fees for small businesses, charge up to 10% of gross receipts for parking lots, and charge \$100 per 1,000 square feet of real property that is used for warehouse and distribution businesses
- 3) By motion, adopt by two-thirds vote the attached resolution asking San Leandro voters to authorize an increase in the ongoing transient occupancy tax charged to hotel guests from 10% to 14%
- 4) Adopt by majority vote the attached resolution appropriating \$65,000 from the City's General Fund Economic Uncertainty Reserve in order to provide funding for public outreach and informational efforts related to the above measures in advance of the November 2016 election

### BACKGROUND

In November 2010, San Leandro voters authorized Measure Z, a local ¼-cent sales tax

revenue measure that was designed to temporarily stabilize the City budget in the midst of the Great Recession. Measure Z provided a reliable, voter-approved funding source for public safety and other essential City services for seven years. As Measure Z was approaching expiration, San Leandro voters authorized its extension at a half-cent rate for 30 years through passage of Measure HH in November 2014. The primary purpose of Measure HH was to preserve *current* City service levels for a range of public services, including public safety and anti-gang programs, library programs, services for children and youth, as well as various other City programs and services. In conjunction with Alameda County Measure BB, Measure HH also assists with the City's significant street and road repair needs.

While Measure HH allows the City to maintain *existing* service levels, the City continues to face a growing backlog of new and emerging needs that cannot be sufficiently addressed through existing revenue sources. Such needs include major renovations to aging public safety infrastructure (e.g. police and fire protection facilities), deteriorating playground and park equipment in need of replacement, human services challenges related to the homeless and other at-risk and low income community members, and community interest in enhanced artistic and cultural amenities.

Although local sales tax receipts this past year were robust, sales tax is an inherently volatile source of revenue that will generally rise and fall in direct correlation with broader regional economic cycles. Should the economy slow down or contract in future years, the City's revenue base could similarly face steep declines, thereby causing the need for future budget cuts and associated disruptions in service levels. A diversified revenue base is essential to maintain the sustainability of the City's budget.

To address these factors, at the direction of the City Council Finance Committee, City staff began exploring various potential new local sources of revenue which, per State law, require voter authorization. An overview of these measures was presented to the City Council at its June 20, 2016 meeting. Those measures include:

- 1) A medical cannabis business tax of up to 10% of gross receipts;
- 2) A modified business license tax that would reduce fees for small businesses, while charging up to 10% of gross receipts for parking lots, and also charging \$100 per 1,000 square feet of real property that is used for warehouse businesses; and
- 3) An increased transient occupancy tax of up to 14%.

These potential revenue sources align with previously adopted City Council goals and policy priorities, as outlined below. Furthermore, these new revenue sources would not directly impact the vast majority of San Leandro residents, as they would be paid by a select number of businesses and people from out of town. Should the Council decide to move forward with the above measures, staff recommends that the City Council adopt by resolution the attached ordinances which would bring forward corresponding ballot measures for local voter consideration on the upcoming November 2016 ballot.

#### Overview of Potential Cannabis Business Tax

Now that the City has issued its first cannabis dispensary permit, and a second permit is expected to be issued by the City Council on July 18, 2016, the City has an opportunity to derive an important new source of revenue from these businesses. Similar to many other

communities that have permitted the operation of cannabis businesses, the recommended tax in San Leandro would be based on the cannabis dispensaries' annual gross receipts. Given that the specific rates of such taxes vary by jurisdiction, coupled with the rapidly evolving legal and regulatory landscape surrounding the cannabis industry, the proposed ballot question has been structured such that the tax amount would be "up to" 10% of gross receipts. The proposed language would allow the City flexibility to modify the rate over time up to that maximum 10% threshold. The draft ordinance has also been structured such that it would apply to any business involving the use of any component of the cannabis plant. If the adult use of cannabis becomes legal following this November's election and/or if the City Council were to decide in the future to allow other ancillary cannabis-related businesses to operate in the community (e.g. laboratory testing, cultivation sites, or extraction facilities, among others), this tax would apply, providing an important new revenue stream to the City.

Given that no permitted cannabis dispensaries are yet operating in San Leandro, there is uncertainty as to how much revenue could be derived from such a tax. However, based upon revenue estimates provided by Harborside San Leandro as part of its application materials for the first dispensary permit, staff estimates that this revenue measure could potentially generate approximately \$500,000 per year if the tax were initially set at a rate of between 5% and 7% of gross receipts. For comparison purposes, the City of Oakland currently charges a tax of 5% of gross receipts on cannabis businesses and San Jose voters authorized a tax of up to 10% of gross receipts, but the City currently charges 7%.

#### Overview of Potential Modifications to the Business License Tax

The proposed modifications to the business license tax have been designed to better align the City's business license tax rates with City Council priorities to support small businesses located in San Leandro, while also incentivizing the productive use of the City's industrial areas.

##### *Small Business Discount:*

As currently structured in the attached draft ordinance, the per-employee component of the business license tax for small San Leandro businesses with three or fewer employees would be eliminated. Currently, these businesses pay a flat fee of \$128.20, plus a per-employee fee that varies by business type. The per-employee fee would be waived for all small businesses.

This modification would result in a tax reduction for approximately 2,300 small businesses located in San Leandro and an estimated decrease in business license tax revenue of \$250,000 annually.

##### *Warehouse Rate Change:*

Additionally, the proposed draft ordinance would modify the tax rate applied to warehouse and distribution businesses. They are currently charged a flat fee of \$128.20, plus a per-employee fee. The draft ordinance would charge them \$100 per 1,000 square feet of building space. The rationale for this proposed change is to better align the business license fee with the impact of such businesses, much of which comes from the physical size of their business rather than the number of employees. Warehouse and distribution businesses cause heavy wear on local streets through truck and delivery traffic, but generate relatively few jobs and limited business license revenue or sales tax. By modifying the business license tax rate to be based on square footage, the tax would better reflect such businesses' impacts on City infrastructure and services. The estimated additional business license revenue to be

generated from this change in collection methodology is \$450,000 annually.

*Parking Lot Range Change:*

Lastly, the proposed draft ordinance would modify the business tax rate that is applied to parking lots (such as those providing long-term parking for Oakland International Airport). Currently, parking lots pay a flat fee of \$128.20, plus \$38.50 per parking space. The draft ordinance would charge such businesses a rate of 10% of gross receipts. In comparison, the rate in the City of Oakland is currently set at 18.5% of gross receipts. The proposed rate would enable the City of San Leandro to capture additional revenue while still providing parking lot businesses in San Leandro a competitive advantage over those located in Oakland. The estimated additional business license revenue to be generated from this change in collection methodology is \$600,000 annually.

In summary, staff estimates that the above modifications to the City's business license tax which align the taxes collected with the economic priorities of the City could generate up to \$800,000 annually, while simultaneously reducing the tax burden for approximately 2,300 small businesses located in San Leandro.

Overview of Potential Increase in Transient Occupancy Tax

The City's current transient occupancy tax (TOT) is set at 10%, which is charged to travelers when renting overnight accommodations of a limited duration in a hotel, inn, tourist home or house, motel or other lodging located within San Leandro. Other communities in the region have established higher rates, including the cities of Oakland and San Francisco, each of which presently have TOT rates of 14%. In addition, the redevelopment of the San Leandro shoreline area is expected to result in the creation of at least one new hotel in San Leandro, which could provide an important source of additional TOT revenue in the future. The City of San Leandro currently receives approximately \$500,000 in total annual tax receipts from its three hotels. If voters authorize the expansion of the TOT tax from 10% to 14%, an additional \$200,000 in revenue could be realized by the City, with the potential for greater increases in the future as new hotels are constructed.

Overview of Public Opinion Survey

Per the direction of the City Council Finance Committee, staff initiated a contract with a third-party consultant for the development and execution of a public opinion survey designed to gauge community service priorities as well as the potential viability of the aforementioned revenue measures. The telephonic and email survey of 501 likely San Leandro voters has been completed and the results of the survey were presented to the City Council at its July 5, 2016 meeting. A copy of the report summarizing the results of that survey is provided as an attachment to this report.

Survey Results

The survey's results indicate strong informed support from survey respondents for all of the above potential revenue measures. More specifically, 72.2% of survey respondents indicated that they would "definitely" or "probably" support the cannabis business tax; 64.3% of survey respondents indicated support for the Business License Tax modifications; and 64.7% of respondents indicated support for the proposed modifications to the TOT tax. As part of the survey, respondents were also asked about various community priorities that could benefit

from new funding, and the following topics received the highest support:

- Provide shelters for abused women and children
- Fix potholes and repair City streets
- Improve 9-1-1 emergency response times
- Attract new businesses and create jobs in San Leandro
- Enhance safety net programs for homeless and at-risk adults and children

**Proposed Ballot Questions:**

If the City Council should decide to place the above measures on the November 8, 2016 ballot, the following draft ballot language is recommended to be used. It is important to note that this language has been reviewed and is recommended by the City's public opinion survey consultant, is approved by the City Attorney, and also meets the specific legal and technical requirements of the Elections Code. Lastly, this is the specific language that was used in the community survey to gauge public support, outlined above. Staff therefore recommends that no changes be made to the proposed ballot language. Following placement on the ballot, the City Council may also authorize the Mayor or a subcommittee of the City Council to file an argument in favor of the measure and a rebuttal to an argument filed against it, and to work with an independent campaign committee or other third-parties on the preparation of the argument and rebuttal. The draft ballot language for each of the measures is as follows:

**CANNABIS BUSINESS TAX MEASURE:**

*To maintain and enhance the City of San Leandro, with funding that cannot be taken by Sacramento, including: social services, public art, programs that celebrate diversity, multilingual programming and other general city services, shall the City of San Leandro levy an ongoing tax of up to 10% of gross receipts of cannabis (marijuana) businesses in the city, providing \$500,000 annually, requiring independent citizen oversight, financial audits, and that all funds stay in the City of San Leandro?*

YES      NO

**BUSINESS LICENSE TAX:**

*To maintain and enhance the City of San Leandro, with funding that cannot be taken by Sacramento, including: enhancing City infrastructure and general city services, shall the City of San Leandro modify the ongoing business license tax to reduce taxes for small businesses, charge 10 percent of gross receipts for parking lots, and charge \$100 per 1,000 square feet of warehouse and distribution space, providing \$800,000 annually, requiring independent citizen oversight, and all funds stay in San Leandro?*

YES      NO

**TRANSIENT OCCUPANCY TAX MEASURE:**

*To maintain and enhance the City of San Leandro, with funding that cannot be taken by Sacramento, including: enhancing library programming for children, more space for books, reference materials and public access computers, enhancing parks and infrastructure, and other general City services, shall the City of San Leandro increase the ongoing transient occupancy tax charged to hotel guests from 10% to 14%, providing \$200,000 annually, requiring independent citizen oversight, financial audits, and all funds staying in the City of San Leandro?*

YES NO

### **Public Outreach**

If the City Council decides to proceed with asking voters to adopt the above-referenced measures, staff also recommends that as part of its actions, the Council appropriate \$65,000 from its economic uncertainty reserve for various outreach efforts in advance of the November 2016 election. Such efforts could include development of online and mailed informational materials that explain the factual details of the proposed revenue measures. Similar to the outreach efforts that were conducted in advance of Measure HH, a significant component of these costs is driven by the cost of postage for the anticipated informational mailer. These materials and outreach efforts could also provide additional information about the types of community services and other policy priorities that could be funded with the new revenue should voters ultimately decide to authorize the measures. A resolution authorizing a \$65,000 appropriation has been attached to this staff report for the Council's consideration.

### **Fiscal Impacts and Spending Priorities Discussion:**

If adopted by voters, conservative estimates indicate the proposed tax measures could generate approximately \$1.5 million per year in new ongoing General Fund revenue. If the proposed measures are approved by voters, staff also recommends that the City Council consider budgeting portions of the new funds derived from those measures towards the following programs and service priorities, which survey responses indicate are of highest priority to community residents:

- Fixing potholes and repairing city streets
- Improving 9-1-1 emergency response times
- Attracting new businesses and creating jobs in San Leandro
- Enhancing safety net programs for homeless and at-risk adults and children
- Making improvements to the Mulford-Marina Branch Library, including: providing space for a children's area; children's story times; homework center; up-to-date reference materials, books, audio-visual materials and periodicals; public access computers; a community room; and free Wi-Fi
- Providing a police operations center that meets current seismic safety codes and will survive an earthquake and be up and running in a disaster
- Enhancing walking and running trails in San Leandro parks
- Providing traffic calming measures to improve traffic safety
- Connecting to the Bay Trail and Bay Water Trail in San Leandro
- Providing programs that celebrate diversity in San Leandro
- Providing multilingual outreach
- Providing free Wi-Fi hotspots throughout the City
- Enhancing public art including sculptures and murals

In addition, if the City Council were to adopt the attached resolution authorizing funding for public outreach efforts, it would result in \$65,000 in net costs to the General Fund.

### **Submittal Requirements**

The three attached Resolutions for the proposed ballot measures include blank spaces for

certain dates related to the submittal of the approved ordinances, deadlines for the impartial analysis and ballot arguments, and designation of Mayor/Councilmembers to provide the arguments in favor of the measures. The submittal deadlines will be clarified by staff at the July 18 City Council meeting. Staff requests that the City Council provide direction on the individuals authorized to provide written arguments in favor of the measures.

**Budget Authority**

Staff recommends City Council approve appropriation of \$65,000 from the General Fund Economic Uncertainty reserves to account number 010-12-020-5120 for public outreach efforts in fiscal year 2016-17.

**Attachments:**

- Summary of Community Survey Results

**PREPARED BY:** Eric Engelbart, Deputy City Manager, City Manager's Office

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## City of San Leandro: Revenue Measure Feasibility Survey

July 5, 2016



The City of San Leandro commissioned Godbe Research to conduct a survey of local voters with the following research objectives:

- Assess potential community support for a several general purpose revenue measures;
- Identify community priorities for projects and programs;
- Test the influence of informational statements on potential support; and
- Identify any differences due to demographic and/or voter behavioral characteristics.

- Data Collection Telephone and Online Interviewing
- Universe 29,088 likely November 2016 voters in the City of San Leandro
- Fielding Dates June 4 through June 13, 2016
- Interview Length 21 minutes
- Sample Size n=501 (online=242; cell=109; landline=150)
- Languages English=469  
Spanish=17  
Chinese=15
- Margin of Error  $\pm 4.34\%$

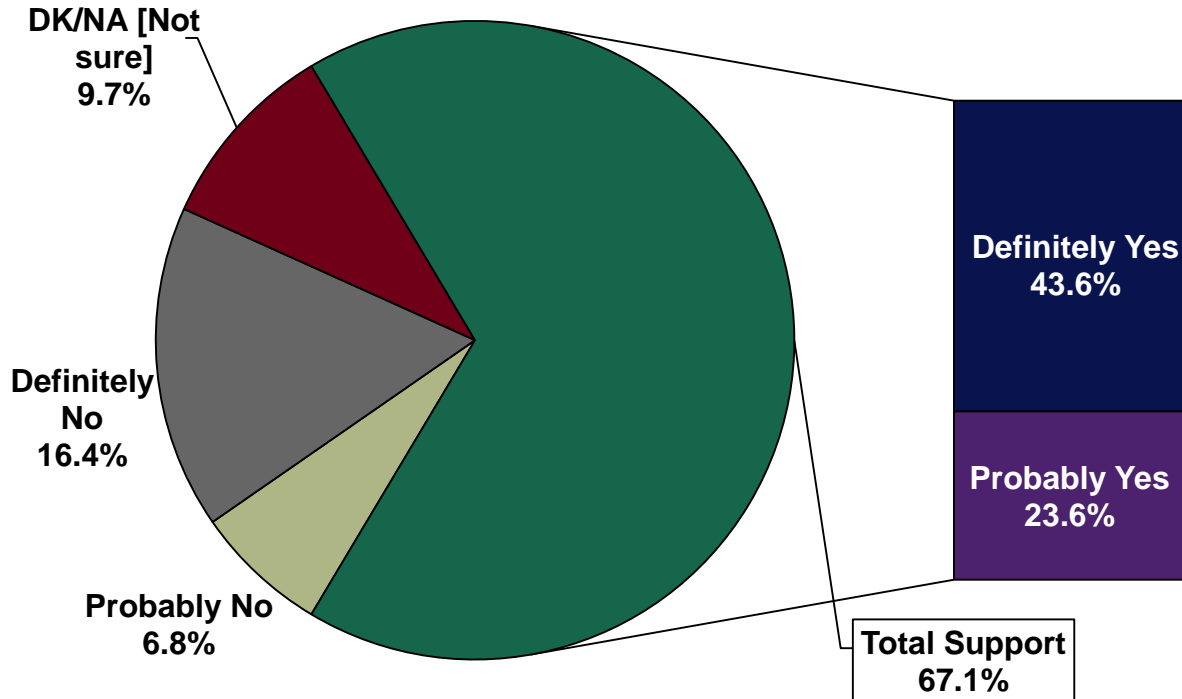


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## Key Findings

# Uninformed Support for Cannabis Tax (n=501)

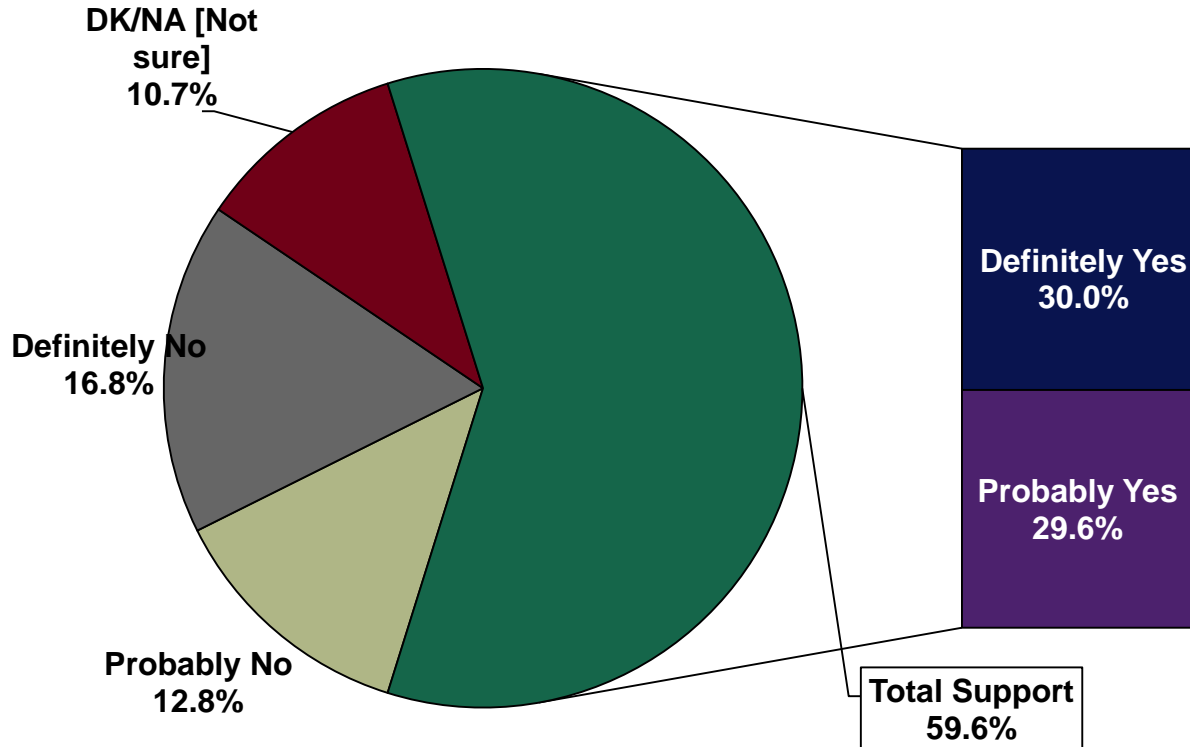


**Cannabis Tax: To maintain and enhance the City of San Leandro, with funding that cannot be taken by Sacramento, including:**

- social services,
- public art,
- programs that celebrate diversity,
- multilingual programming and
- other general city services,

shall the City of San Leandro levy an ongoing tax of up to 10% of gross receipts of cannabis (marijuana) businesses in the city, providing \$500,000 annually, requiring independent citizen oversight, financial audits, and that all funds stay in the City of San Leandro?

# Uninformed Support for Business License Tax (n=501)

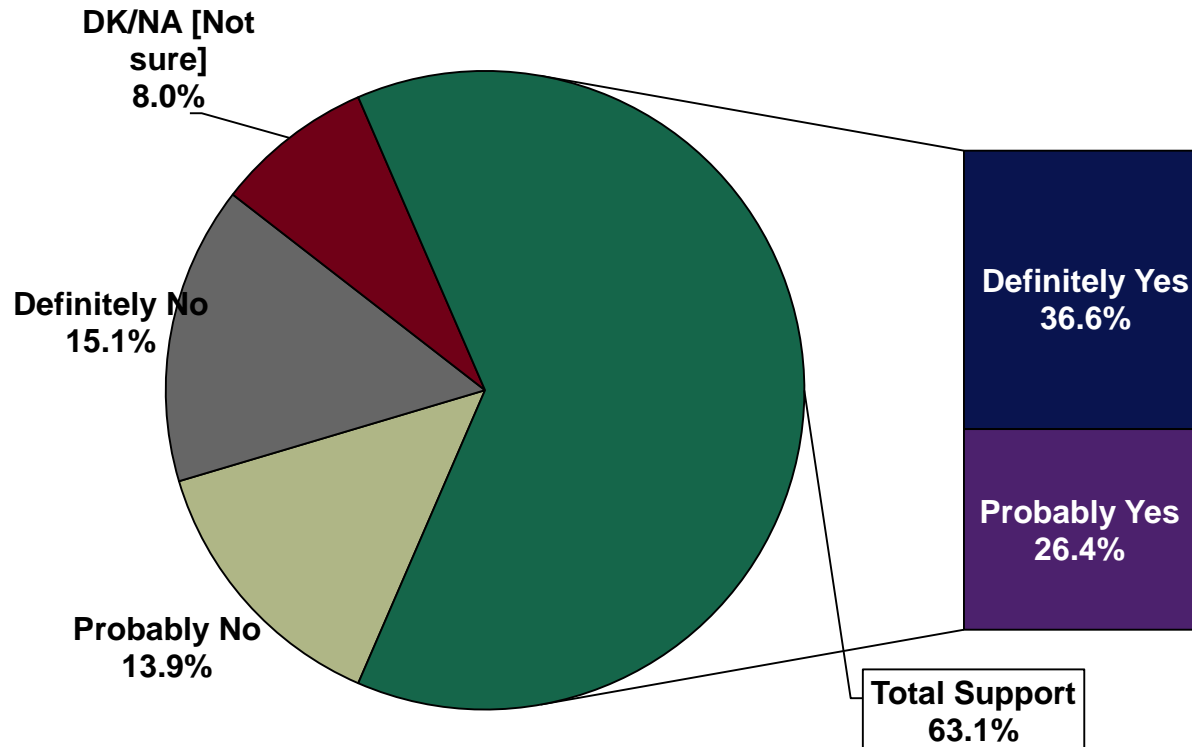


**Business License Tax: To maintain and enhance the City of San Leandro, with funding that cannot be taken by Sacramento, including:**

- enhancing the library and infrastructure, and
- other general city services,

shall the City of San Leandro modify the ongoing business license tax to reduce fees for small businesses, charge 10 percent of gross receipts for parking lots, and charge \$100 per 1,000 square feet of warehouse space, providing \$800,000 annually, requiring independent citizen oversight, and all funds stay in San Leandro?

# Uninformed Support for Transient Occupancy Tax (n=501)

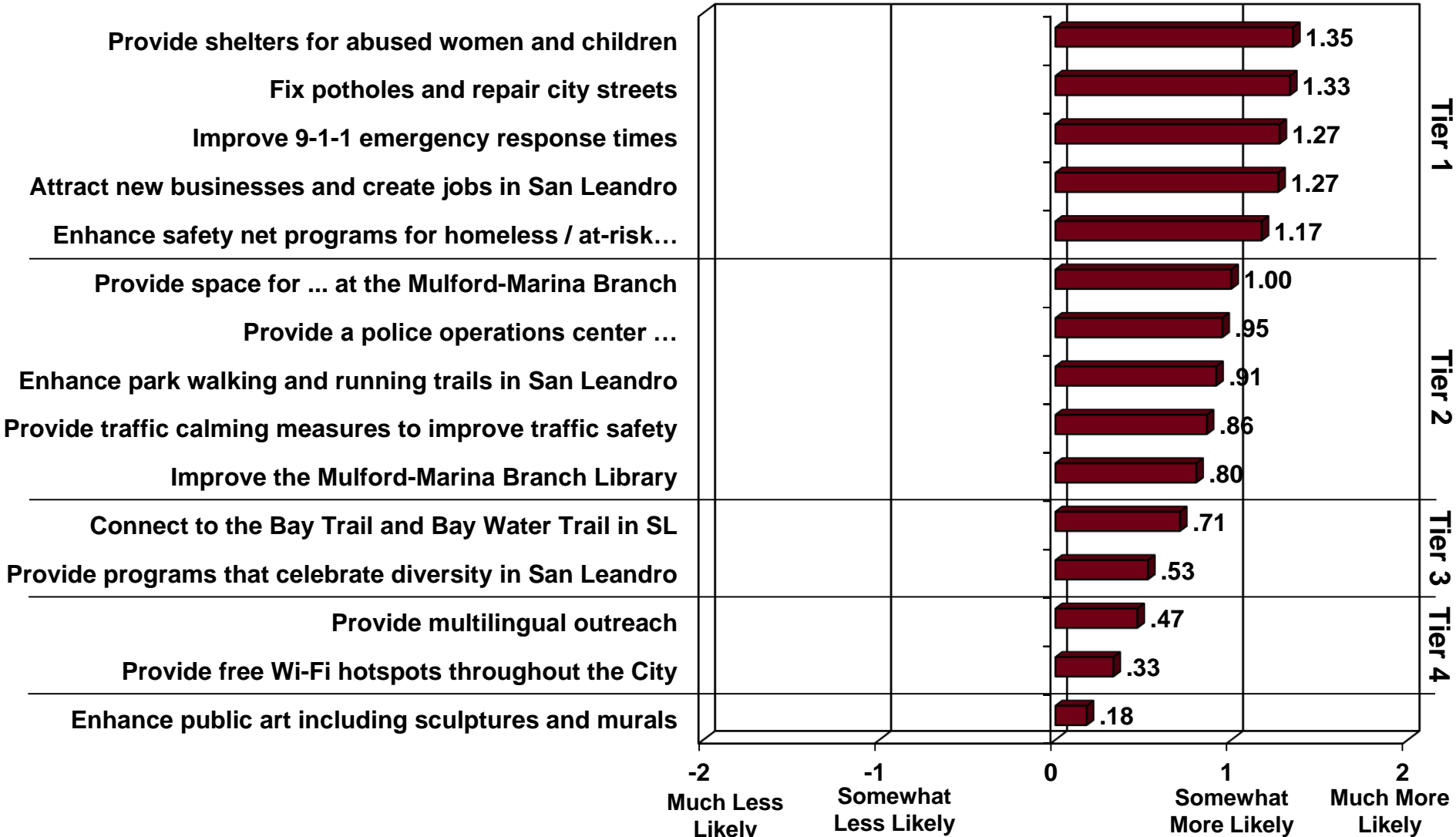


**Transient Occupancy Tax: To maintain and enhance the City of San Leandro, with funding that cannot be taken by Sacramento, including:**

- enhancing the library for children's programs, providing space for books, reference materials and public access computers,
- enhancing parks, roads and infrastructure, and
- other general city services,

shall the City of San Leandro increase the ongoing transient occupancy tax charged to hotel guests from 10% to 14%, providing \$200,000 annually, requiring independent citizen oversight, financial audits, and all funds staying in the City of San Leandro?

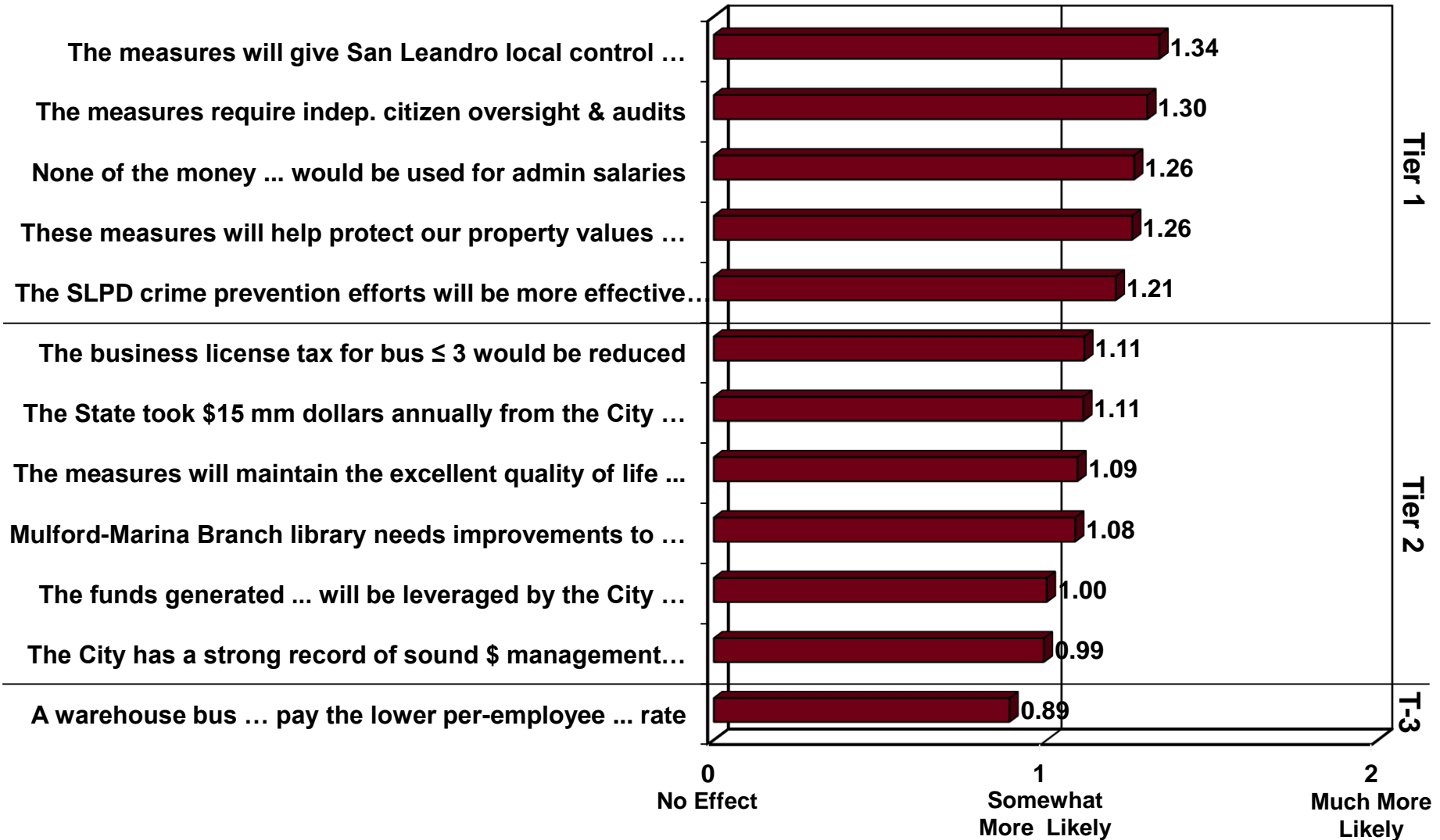
# Community Priorities (n=501)



548

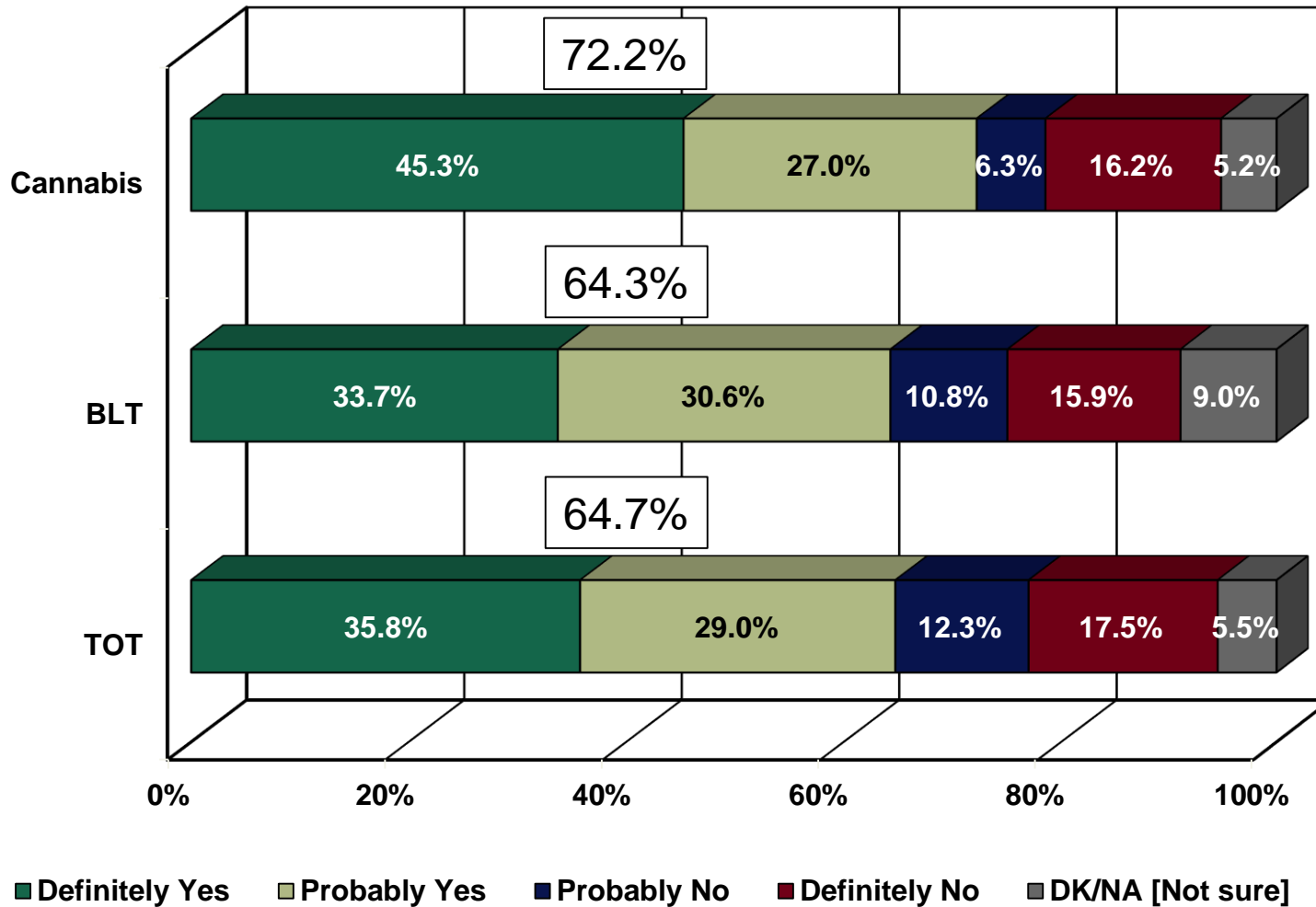
Note: The above rating questions have been abbreviated for charting purposes, and responses were recoded to calculate mean scores: "Much More Likely" = +2, "Somewhat More Likely" = +1, "No Effect" = 0, "Somewhat Less Likely" = -1, and "Much Less Likely" = -2.

# Informational Statements (n=501)





# Informed Support (n=501)



- The survey revealed a solid base of voter support for three general purpose tax measures, and increased from the initial to final tests. Final support for the Cannabis measure was 72.2%, for the Business License Tax was 64.3% and support for the Transient Occupancy Tax was 64.7%.
- Top community priorities include:
  - Provide shelters for abused women and children.
  - Fix potholes and repair city streets.
  - Improve 9-1-1 emergency response times.
  - Attract new businesses and create jobs in San Leandro.
  - Enhance safety net programs for homeless and at-risk adults and children.
  - Provide space for a children's area; children's story times; homework center; up-to-date reference materials, books, audio-visual materials and periodicals; public access computers; community room; and free Wi-Fi at the Mulford-Marina Branch.
  - Provide a police operations center that meets current seismic safety codes and will survive an earthquake and be up and running in a disaster.
- Key informational statements include:
  - The measures will give San Leandro local control over local funds for local needs. The money cannot be taken by Sacramento.
  - The measures require independent citizen oversight, mandatory financial audits, and yearly reports to the community to ensure that all funds are spent as promised.
  - These measures will help protect our property values by providing quality city services, parks, open space and safe neighborhoods.

- The San Leandro Police Department's crime prevention efforts will be more effective with the technology available in an up-to-date police operations center.
  - The business license tax for businesses of three employees or less would be reduced.
  - The State took \$12 million dollars annually from the City of San Leandro, these measures will replace this loss and provide a local source of funds, for local needs.
- Given the survey findings, the simple majority required for approval for each measure, as a general purpose tax, Godbe Research recommends that the City of San Leandro consider moving the process forward to a November 2016 for all three measures.



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# City of San Leandro

Meeting Date: July 18, 2016

## Resolution - Council

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**File Number:** 16-380

**Agenda Section:** ACTION ITEMS

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Chris Zapata  
City Manager

**FINANCE REVIEW:** Not Applicable

**TITLE:** RESOLUTION Establishing November 8, 2016, as the Date for an Election on a Proposed Ballot Measure Seeking Voter Approval of a Tax On Cannabis Businesses, Establishing Policies and Procedures in Connection with Such an Election, and Requesting that the Alameda County Registrar of Voters Conduct Such an Election, and Requesting that the City Attorney Prepare an Impartial Analysis of the Proposed Ballot Measure

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**WHEREAS**, the City Council of the City of San Leandro desires to impose a tax on cannabis businesses that may seek to operate within San Leandro in the amount of up to \$100.00 for each \$1000.00 of gross receipts for cannabis businesses; and

**WHEREAS**, California Constitution Article XIII C, Section 2(b), provides that no local government may impose a general tax unless and until that tax is submitted to the electorate and approved by a majority vote; and

**WHEREAS**, the proposed Cannabis Business Tax is a general tax, the revenues of which would be used for general governmental purposes, and placed in the City's general fund for the usual expenses of the City; and

**WHEREAS**, California Constitution Article XIII C, Section 2(b), requires that a measure proposing to impose a general tax must be consolidated with a city's general municipal election for members of the City Council; and

**WHEREAS**, November 8, 2016 is the date of the City's regular municipal election; and

**WHEREAS**, the City Council is authorized by California Elections Code Section 9222 to place measures before the voters; and

**WHEREAS**, the City Council desires to place the Cannabis Business Tax, attached

hereto as **Attachment 1**, as a measure before the voters on the November 8, 2016 general election; and

**WHEREAS**, the City Council desires that the proposed measure be consolidated with the November 8, 2016 regularly scheduled general election, be held on the same date, and that within the City, the polling places and election officers of the two elections be the same, and that the County Elections Department of the County of Alameda canvass the returns of the general election and that the election be held in all respects as if there were only one election.

**NOW, THEREFORE, IT IS HEREBY RESOLVED**, that the City Council of the City of San Leandro does ordain as follows:

**1. Placement of Measure on the Ballot.** Pursuant to California Elections Code Section 9222, the City Council hereby resolves that the ballot for the November 8, 2016 election shall include a measure that, if approved, would impose a tax on cannabis businesses that seek to operate within the City of San Leandro; and

(a) Ballot Language.

The ballot language for the measure shall be as follows:

*To maintain and enhance the City of San Leandro, with funding that cannot be taken by Sacramento, including: social services, public art, programs that celebrate diversity, multilingual programming and other general city services, shall the City of San Leandro levy an ongoing tax of up to 10% of gross receipts of cannabis (marijuana) businesses in the city, providing \$500,000 annually, requiring independent citizen oversight, financial audits, and that all funds stay in the City of San Leandro?*

YES      NO

**2. Proposed Ordinance.** The Ordinance authorizing the Cannabis Business Tax to be approved by the voters pursuant to Section 1 is as set forth in **Attachment 1** hereto. The City Council hereby approves the submission of the Ordinance to the voters of the City at the November 8, 2016, election. The City requests that the County of Alameda Elections Department print **Attachment 1** in its entirety with the election materials. The full text of the ordinance shall be printed in the voter information guide.

**3. Publication of Measure.** The City Clerk is hereby directed to cause notice of the measure to be published once in a newspaper of general circulation in the City, in accordance with Section 12111 of the Elections Code and Section 6061 of the Government Code.

**4. Request to Consolidate and Conduct Election and Canvass Returns.**\_

(a) The City Council hereby requests that the Alameda County Board of Supervisors consolidate the election called by this resolution with the statewide election to be conducted

on November 8, 2016 and order the election to be conducted by the Registrar of Voters. The City Clerk is directed to file a certified copy of this resolution with the Board of Supervisors of Alameda County and the Registrar of Voters of Alameda County on or before \_\_\_\_\_.

(b) The election on the measure shall be held and conducted, the voters canvassed and the returns made, and the results ascertained and determined as provided for herein. In all particulars, the election shall be held in accordance with the Elections Code of the State of California.

(c) The election on the measure shall be held in Alameda County in the City of San Leandro on November 8, 2016, as required by law, and the Board of Supervisors of Alameda County is authorized to canvass the returns of the election with respect to the votes cast in the City of San Leandro and certify the results to the City Council of the City of San Leandro.

(d) At the next regular meeting of the City Council of the City of San Leandro occurring after the returns of the election for the measure have been canvassed and the certification of the results to the City Council, the City Council shall cause to be entered in its minutes a statement of the results of the election.

(e) The City Council acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418.

#### **5. Submission of Ballot Arguments and Impartial Analysis.**

(a) The last day for submission of direct arguments for or against the measure shall be by 5 p.m. on \_\_\_\_.

(b) The last day for submission of rebuttal arguments for or against the measure shall be by 5 p.m. on \_\_\_\_.

(c) Direct arguments shall not exceed three hundred words and shall be signed by not more than five persons.

(d) Rebuttal arguments shall not exceed two hundred fifty words and shall be signed by not more than five persons; those persons may be different persons that the persons who signed the direct arguments.

(e) The City Attorney shall prepare an impartial analysis of the measure by \_\_\_\_.

(f) The Mayor (and Council Member or Vice Mayor) (or Council Members \_\_\_\_\_) is/are hereby authorized to file a written argument in favor of the proposed measure, not to exceed three hundred words, on behalf of the City Council. At the Mayor's discretion, the argument may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote. In the event that an argument is filed against the measure, the Mayor and Vice Mayor/Council Member are also authorized to file a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or bona fide association or by individual voters who are eligible to vote, which may be different from those who signed the direct argument.

(g) Pursuant to California Elections Code Section 9285, when the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument, which it seeks to rebut.

**6. Passage of the Resolution.** Pursuant to California Government Code Section 53724(b), this Resolution, including the approval of the submission of the proposed Ordinance (attached as **Attachment 1**) must be approved by a two-thirds vote of all members of the City Council.

**7. Effective Date.** This Resolution shall become effective immediately upon its passage and adoption, and the City Clerk is directed to send certified copies of this Resolution to the Alameda County Board of Supervisors, to the Alameda County Clerk-Recorder, and County of Alameda Elections Department.

**8. Appropriation of Necessary Funds.** The City Manager is hereby authorized and directed to appropriate the necessary funds to pay for the City's costs of placing the measure on the election ballot.

**9. Services of City Clerk.** The City Clerk is hereby authorized and directed to take all steps necessary to place the measure on the ballot and to cause the ordinance or measure to be printed. A copy of the ordinance or measure shall be made available to any voters upon request.

**10. CEQA.** Compliance with California Environmental Quality Act. The approval of this resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). The tax proposed by this resolution is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.



## **An ORDINANCE Adopting A Cannabis Business Tax**

BE IT ORDAINED by the Council of the City of San Leandro as follows:

Section 1. That a new Chapter 2-21 is hereby added to the San Leandro Municipal Code to read as follows:

### **Chapter 2-21**

#### **CANNABIS BUSINESS TAX**

##### Sections

|           |  |
|-----------|--|
| 2-21-100  | Short Title.                                       |
| 2-21-200  | Purpose and intent.                                |
| 2-21-300  | Definitions.                                       |
| 2-21-400  | Payment of tax.                                    |
| 2-21-450  | Declaration statement required.                    |
| 2-21-500  | Payment-Timing.                                    |
| 2-21-600  | Audit of declaration statement and payment.        |
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| 2-21-900  | Deficiency determinations.                         |
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| 2-21-1300 | Remedies for chapter violation – Taxes not waived. |
| 2-21-1400 | Amendments of Chapter.                             |
| 2-21-1500 | Administrative Regulations.                        |

##### **2-21-100 Short title.**

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This chapter is known as the City of San Leandro cannabis business tax ordinance.

##### **2-21-200 Purpose and intent.**

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This chapter is enacted solely to raise revenue for municipal purposes and is not intended for regulation.

##### **2-21-300 Definitions.**

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A. “Annual gross receipts” means the gross receipts produced by the cannabis business during the 12-month period between issuance and renewal of the business license for the cannabis business.

B. "Building" means any structure having a roof supported by a columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind, or anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

C. "Business improvements" means square footage used, on a regular basis, for the operation of a nonprofit organization as defined in Article XIII, Section 26 of the California Constitution, or a for profit organization organized in a manner that is recognized by the California Secretary of State regardless of whether it is owned or leased.

D. "Cannabis business" means any business or activity including, but not limited to, planting, cultivation, harvesting, transporting, manufacturing, extracting, compounding, converting, processing, preparing, storing, packaging, testing, or wholesale and/or retail sales of marijuana, any part of the Cannabis plant, as defined by California Business and Professions Code section 19300.5, as that section may be amended from time to time, or any of its derivatives, and specifically excludes the activity of cultivating medical cannabis or any of its derivatives on personal property for personal consumption in accordance with the provisions of the Medical Marijuana Regulation and Safety Act of 2015 by the owner, lawful occupant, or other lawful resident or guest of the private property owner, or lawful occupant.

E. "Discontinued, dissolved or otherwise terminated" means the date the cannabis business is no longer in operation. The City's finance director, using all evidence, including evidence provided by the cannabis business licensee, will make the determination as to whether a cannabis business has been discontinued, dissolved or otherwise terminated.

F. "Gross receipts" means the total of the amounts actually received or receivable from sales and the total amounts actually received or receivable for the performance of any act or service for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in conjunction with the sale of materials, goods, wares, or merchandise. Included in gross receipts are all receipts, cash, credits and property of any kind without deduction of the cost of the property sold, the cost of the materials

used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from gross receipts are the following:

1. Cash discounts allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of property returned by purchases upon rescission of the contract of sale as is refunded either in cash or by credit.

G. "Licensee" or "cannabis business licensee" means a person who has been issued a special permit or license for operation of a cannabis business within the City.

H. "Nonprofit organization" means any association, corporation or other entity that is exempt from taxation measured by income or gross receipts under Article XIII, Section 26 of the California Constitution.

I.

#### **2-21-400 Tax Imposed.**

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In addition to any requirements imposed elsewhere in the San Leandro Municipal Code, for the privilege of operating a cannabis business in the City, an annual tax is hereby imposed on each licensee operating a cannabis business as follows:

A. Every cannabis business must pay an annual tax of \$100 for each \$1,000 of gross receipts.

B. The city council may impose the tax authorized by this section at a lower rate. No action taken by the city council under this subsection to reduce the tax rate will prevent it from subsequently increasing the tax rate for cannabis business to the maximum rate specified in this section.

#### **2-21-450 Declaration statement required.**

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A. At the time of payment of the taxes imposed by this chapter, each cannabis business licensee must file with the City finance department a statement, under oath, showing the true and correct amount of annual gross receipts derived from the cannabis business allowed by the special permit or license issued to the licensee. A signed declaration must be attached to the statement included therein, which will be in substantially the same form as: "I hereby declare under penalty of perjury that the foregoing is true and correct." The City has the right to audit the matters reported in the statement to determine the accuracy of the figures contained therein.

### **2-21-500 Payment – Timing.**

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A. All taxes imposed by this chapter on a cannabis business whether it is a nonprofit organization or a for-profit business must be paid to the City's finance department on or before the fifteenth day after the close of the month for which the tax is due. Licensees or operators of cannabis businesses must file a monthly report with the City, even if there are no taxes currently due. The report will show the annual gross receipts to date as of the close of the prior month and will be used to calculate the amount of tax due. Payment will accompany the form. The form will be provided by the City and the City may revise the report without advance notice from time to time. Payment of taxes imposed by this chapter must be in the correct amount of taxes due and owing. Such sums correctly reflecting taxes will be accepted by the City, subject, however, to the City's right to conduct an audit.

B. If any licensee or operator of a cannabis business is liable for any amount of tax, interest or penalty under this chapter, and he or she sells or otherwise disposes of the business, his or her successors or assigns must withhold from the purchase price a sum sufficient to cover such amount until the former licensee or operator produces from the City either a receipt reflecting full payment or a certificate stating that no amount is due.

C. If the purchaser of a cannabis business fails to withhold a sum from the purchase price as required in subsection (B) of this section, he/she will be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price.

### **2-21-600 Audit of declaration statement and payment.**

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A. The City has the right to audit the matters referred to in the declaration statement, and to determine the correctness of the figures set forth in such statement, and the amount payable to the City.

B. The books, records and accounts of any licensee may be inspected and audited by the City.

C. Such an inspection and audit may be performed by the City's finance director or his designee, a qualified accountant, a city official selected by the finance director, or a consultant selected by the finance director.

D. To facilitate such audits, the licensee must keep complete records of all transactions related to the receipt or disbursement of funds arising out of or related to cannabis business operations during the preceding three-year period. All such records must be made available to the City for audit at the licensee's place of doing business or such other place that the City may designate during normal business hours after reasonable prior notice.

E. Any failure or refusal of any licensee to make and file a declaration statement within the required time period, or to pay such sums by way of taxes when the same are due and payable in accordance with the provisions of this chapter, or to permit such inspection of such books, records and accounts of such licensee will be and constitute full and sufficient grounds for suspension or revocation of any special business license or permit for operation of a cannabis business.

**2-21-700 Notice not required by City.**

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The City is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter, and failure to send such notice or bill will not affect the validity of any tax, interest or penalty due under the provisions of this chapter.

**2-21-800 Tax deemed debt to City.**

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The amount of any tax, penalties and interest imposed by the provisions of this chapter will be deemed a debt to the City, and any licensee carrying on any business without having paid to the City the tax under this chapter will be liable to an action in the name

of the City in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such business.

### **2-21-900 Deficiency determinations.**

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A. If the finance director is not satisfied that a declaration statement filed, as required under the provisions of this chapter, is correct, or that the amount of tax is correctly computed, the finance director may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the declaration statement or upon the basis of any information in the City's possession or that may come into the City's possession.

B. The City may make more than one deficiency determination of the amount of tax due for a period or periods.

C. In the case of a cannabis business which is discontinued, dissolved or otherwise terminated, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.

D. Whenever a deficiency determination is made, the City will provide 15 calendar days' notice to the licensee.

### **2-21-1000 Tax assessment – Nonpayment – Fraud.**

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A. Under any of the following circumstances, the finance director may make and give notice of an assessment of the amount of tax owed by a cannabis business under this chapter:

1. If the licensee has not filed any declaration statement required under the provisions of this chapter;
2. If the licensee has not paid any tax due under the provisions of this chapter;
3. If the licensee has not, after demand by the finance director, filed a corrected declaration statement or furnished to the finance director adequate substantiation of the information contained in a statement of

revenue already filed, or paid any additional amount of tax due under the provisions of this chapter.

B. The notice of assessment will separately set forth the amount of any tax known or estimated by the finance director to be due, after full consideration of all information within his or her knowledge concerning the cannabis business activities of the person or licensee assessed and will include the amount of any penalties, costs or interest accrued on each amount to the date of the notice of assessment.

#### **2-21-1100 Tax assessment – Notice requirements.**

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The notice of assessment will be served upon the licensee either by personal service on the licensee, or by depositing the notice in the United States mail, postage prepaid thereon, addressed to the licensee at the address of the location of the business appearing on the face of the business license(s) issued under Title 2 to the licensee, or to such other address as the licensee registers with the finance director for the purpose of receiving notices provided under this chapter. For the purposes of this section, service by mail is complete at the time of deposit in the United States mail.

#### **2-21-1200 Tax assessment – Hearing.**

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A. Within 10 days after the date of service of a notice issued under section 2-21-1100, the licensee may apply in writing to the finance director for a hearing on the assessment.

B. If application for a hearing before the finance director is not made within the time herein prescribed, the tax assessed by the finance director will become final and conclusive.

C. Within 30 days of the receipt of any such application for hearing, the finance director will cause the matter to be set for hearing before him or her not later than 30 days after the date of application, unless a later date is agreed to by the finance director and the licensee requesting the hearing.

D. Notice of such hearing will be given by the finance director to the licensee requesting such hearing not later than five days prior to such hearing. At such hearing, said

licensee may appear and offer evidence why the assessment as made by the finance director should not be confirmed and fixed as a tax.

E. After such hearing, the finance director will make a written determination and may at his discretion reassess the proper tax to be charged and will give written notice thereof to the licensee.

### **2-21-1300 Remedies for chapter violation – Taxes not waived.**

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A. Nothing in this chapter limits the city from using any remedy legally available for violations of this chapter, including, but not limited to, the penalties under Chapter 1-12 of the San Leandro Municipal Code.

B. The conviction and punishment of any person for failure to pay the required tax will not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction.

C. No civil action will prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.

### **2-21-1300 Amendments of Chapter.**

The City Council may amend this Chapter at any time as long as the amendments do not increase the tax or, change the method of calculating the tax.

### **2-21-1500 Administrative Regulations.**

The City Manager may adopt administrative regulations as needed to implement this Chapter.

Section 2. CEQA. This Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §21000, “CEQA”) pursuant to CEQA guidelines 15060, “Preliminary Review,” subdivision (c)(2) in that it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and 15378, “Project,” subdivisions (2) and (4) of subdivision (b), in that this tax does not constitute a project under CEQA and therefore review under CEQA is not required.

Section 3. Severability.



If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

Section 4. Effective Date. This Ordinance shall take effect immediately after approval by the voters of the ballot measure related hereto.



# City of San Leandro

Meeting Date: July 18, 2016

## Resolution - Council

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**File Number:** 16-382

**Agenda Section:** ACTION ITEMS

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Chris Zapata  
City Manager

**FINANCE REVIEW:** Not Applicable

**TITLE:** RESOLUTION Establishing November 8, 2016 as the Date for a Municipal Election on a Proposed Ballot Measure Seeking Voter Authorization to Amend the City's Existing Business License Tax for General Fund Purposes, Establishing Policies and Procedures in Connection with Such an Election, Requesting that the Alameda County Registrar of Voters Conduct Such an Election, and Requesting that the City Attorney Prepare and File an Impartial Analysis of the Proposed Ballot Measure

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**WHEREAS**, the proposed updates to the business license tax ordinance have been designed to better align the City's business license tax rates with City Council priorities to support local small businesses, to incentivize the productive use of the City's industrial areas, and to modify the rate applied to warehouse and distribution businesses and parking lots while still ensuring a competitive advantage for those parking lots as compared to similar businesses in Oakland; and

**WHEREAS**, the proposed updates would not negatively impact the vast majority of San Leandro's businesses; and

**WHEREAS**, this proposed ordinance will be submitted to the voters of the City at the November 8, 2016 general municipal election. The tax will be approved if the measure receives at least a majority of affirmative votes. Revenue from the tax would be placed in the City's General Fund, so the proposed tax would be a general tax; and

**WHEREAS**, under the provisions of State law relating to charter cities in the State of California, an election shall be held on November 8, 2016, for the submission to the voters of a question relating to an amendment to the business license tax; and

**WHEREAS**, it is desirable that the election be consolidated with the statewide election to be held on the same date, and that within the City, the precincts, polling places, and

election officers of the two elections be the same; and

**WHEREAS**, it is desirable that the County Elections Department of the County of Alameda canvass the returns of the election and that the election be handled in all respects as if there were only one election.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of San Leandro that:

Section 1. The foregoing recitals are true and correct and hereby incorporated by reference.

Section 2. The City Council is authorized to present a proposition to the voters for their consideration pursuant to Article XIIC of the California Constitution, Government Code section 53724, and Elections Code section 9222. Pursuant to California Government Code Section 53724(b), this Resolution, including the approval of the submission of the proposed Ordinance (attached as Attachment 1) must be approved by a two-thirds vote of all members of the City Council.

Section 3. The City Council hereby calls an election at which it shall submit to the qualified voters of the City of San Leandro, a measure that, if approved, would amend the City's general business license tax, as authorized by California Government Code section 37101 and California Business and Professions Code section 16000 *et seq.* This measure shall be designated by letter by the Alameda County Registrar of Voters. Pursuant to Elections Code Section 10400 *et seq.*, the election for this measure shall be consolidated with the election to be conducted on November 8, 2016.

Section 4. The ballot language for the proposed measure shall be as follows:

*To maintain and enhance the City of San Leandro, with funding that cannot be taken by Sacramento, including: enhancing City infrastructure and general City services, shall the City of San Leandro modify the ongoing business license tax to reduce taxes for small businesses, charge 10 percent of gross receipts for parking lots, and charge \$100 per 1,000 square feet of warehouse and distribution space, providing \$800,000 annually, requiring independent taxpayer oversight, and all funds stay in San Leandro?*

YES                      NO

Section 5. The full text of the proposed measure to be submitted to the voters is attached as Attachment 1 (the "Measure") hereto. If the majority of qualified voters voting on the Measure vote in favor therefor, the Measure shall be adopted and shall be effective upon its adoption.

Section 6. The City Clerk is hereby directed to cause notice of the measure to be published once in a newspaper of general circulation in the City, in accordance with Section 12111 of the Elections Code and Section 6061 of the Government Code.

Section 7. The City Clerk is directed to cause the posting, publication, and printing of notices and all other matters pursuant to the requirements of the Elections Code and Government Code of the State of California.

Section 8.

(a) The City Council hereby requests that the Alameda County Board of Supervisors consolidate the election called by this resolution with the statewide election to be conducted on November 8, 2016 and order the election to be conducted by the Registrar of Voters. The City Clerk is directed to file a certified copy of this resolution with the Board of Supervisors of Alameda County and the Registrar of Voters of Alameda County on or before \_\_\_\_\_.

(b) The election on the measure set forth in Section 4 shall be held and conducted, the voters canvassed and the returns made, and the results ascertained and determined as provided for herein. In all particulars, the election shall be held in accordance with the Elections Code of the State of California.

(c) The election on the measure set forth in Section 4 shall be held in Alameda County in the City of San Leandro on November 8, 2016, as required by law, and the Board of Supervisors of Alameda County is authorized to canvass the returns of the election with respect to the votes cast in the City of San Leandro and certify the results to the City Council of the City of San Leandro.

(d) At the next regular meeting of the City Council of the City of San Leandro occurring after the returns of the election for the measure set forth in Section 4 have been canvassed and the certification of the results to the City Council, the City Council shall cause to be entered in its minutes a statement of the results of the election.

(e) The City Council acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418.

Section 9.

(a) The last day for submission of primary arguments for or against the measure shall be by 5:00 p.m. on \_\_\_\_\_.

(b) The last day for submission of rebuttal arguments for or against the measure shall be by 5:00 p.m. on \_\_\_\_\_.

(c) Primary arguments shall not exceed three hundred words and shall be signed by not more than five persons.

(d) Rebuttal arguments shall not exceed two hundred fifty words and shall be signed by not more than five persons; those persons may be different from the persons who signed the primary arguments.

(e) The City Attorney shall prepare by \_\_\_\_\_, an impartial analysis of the Measure showing the effect of the Measure.

- (f) The Mayor (and Council Member or Vice Mayor) (or Council Members \_\_\_\_\_) is/are hereby authorized to file a written argument in favor of the proposed measure, not to exceed three hundred words, on behalf of the City Council. At the Mayor's discretion, the argument may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote. In the event that an argument is filed against the measure, the Mayor and Vice Mayor/Council Member are also authorized to file a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote, which may be different from those who signed the direct argument.
- (g) Pursuant to California Elections Code Section 9285, when the City Clerk has selected the arguments for and against the Measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the Measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument that it seeks to rebut.

Section 10. The City Clerk is hereby authorized and directed to take all steps necessary to place the Measure on the ballot and to cause the ordinance or measure to be printed. A copy of the ordinance or measure shall be made available to any voter upon request..

Section 11. The City Manager is hereby authorized and directed to appropriate the necessary funds to pay for the City's costs of placing the measure on the election ballot.

Section 12. Compliance with California Environmental Quality Act. The approval of this resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). The tax proposed by this resolution is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.

2675189.3  
2678298.1

## **An ORDINANCE of the City of San Leandro Amending Title 2, Chapter 2-2 of the San Leandro Municipal Code Relating to Business License Tax**

The City Council of the City of San Leandro does ordain as follows:

### **SECTION 1. Amendments.**

A. Section 2-2-220 is hereby amended to read as follows, with deletions in strikethrough and additions in underlined text:

Business classification shall mean the following general business categories:

(a) Automobile Wrecking. Any person engaged in the business of buying or trading used or wrecked motor vehicles and reselling the parts thereof or the building of motor vehicles from the salvaged parts of such motor vehicles.

(b) Bingo shall mean a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random.

(c) Carnival. Any person engaged in the business of operating a carnival, circus or other itinerant amusement concession, excluding an activity for which a permit has been obtained pursuant to the Zoning Code of the City of San Leandro and which is:

(1) An incidental part of an overall business promotional activity conducted by an organized group of merchants licensed to do business within the City.

(2) Carried on by or on behalf of a civic, religious, cultural, benevolent or similar nonprofit organization with a minimum of forty percent (40%) of the gross receipts of such activity to be received by such organization.

(3) A neighborhood carnival, exhibit, celebration or festival sponsored by an organized group of residents in the vicinity, provided that no mechanical rides are a part of such activity.

(4) A booth for charitable, welfare or patriotic purposes.

(d) Christmas Tree and Pumpkin Sales. Christmas tree and pumpkin sales shall mean the selling of Christmas trees and pumpkins at retail, excluding such sales by a licensee from a permanently established licensed place of business within the City.

(e) Coin-Operated Device. Coin-operated device shall mean laundry machine, video game machine, pinball machine, juke box, vending machine or other similar coin-operated electrical or mechanical device.

(f) Commercial Advertising. Commercial advertising shall mean the distribution of commercial advertising material, excluding distribution of such material advertising a permanently established licensed business within the City by the owner or employees of such business.

(g) Contractors. Any person who is licensed as a contractor by the State of California and who undertakes or offers to undertake or submits a bid to construct, alter, repair, improve, move, wreck or demolish any building, highway, excavation or other structure, project, development or improvement, or to do any part thereof. The term contractor includes subcontractor and specialty contractor.

(h) Dance Hall shall mean any establishment where dancing is permitted with or without charge, whether or not in conjunction with any other business.

(i) Firearms Dealer shall mean a person whose business substantially consists of the selling, transferring, or leasing, or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm capable of being concealed upon the person as defined by the Penal Code of the State of California.

(j) Fortunetelling. Any person engaged in the business of telling fortunes, forecasting futures or furnishing any information not otherwise obtainable by the ordinary process of knowledge.

(k) Itinerant Merchant. Any person engaged in the temporary business of exhibiting, selling and delivering goods, wares or merchandise and who for the purpose of carrying on such business hires, leases, uses or occupies any building, room, motor vehicle, tent or other place within the City.

(l) Second Hand Dealer. Any person engaged in the business of buying, selling, exchanging, trading, accepting for sale or consignment, secondhand personal property of whatever kind or description.

(m) Manufacturing. Any person conducting, managing or carrying on a business consisting mainly of manufacturing, ~~packing, processing, carrying or selling at wholesale~~ any goods, wares, merchandise or produce.

(n) Miscellaneous. Any person engaged in a business not specifically defined by other provisions of this Chapter and not otherwise exempt.

(o) Parking Lot means and includes, but is not limited to:

(1) Any outdoor space or uncovered plot, place, lot, parcel, yard or enclosure, or any portion thereof, where motor vehicles may be parked, stored housed or kept, for which any charge is made;

(2) Any building or structure, or any portion thereof, in which motor vehicles may be parked, stored, housed or kept, for which a charge is made.

(p) Pawnbroker. Any person engaged in the business of receiving goods in pledge as security for a loan.

(q) Peddler. Any person conveying or transporting goods, wares, merchandise, or provisions from place to place, from house to house or from street to street, offering and exposing the same for sale or making sales and delivering articles to purchasers.

(r) Public Utilities. Any person engaged in the business of providing utility services (whether or not regulated by the Public Utilities Commission) to the general public including, but not limited to, electricity, telephone, gas, cable television services, cellular phone service, and data transmission.

(s) Professional. Any person engaged in a profession or vocation requiring a period of specialized training such as, but not limited to the following:

Architect

Attorney-at-Law

Certified Public Accountant

Chiropractor

Dentist

Engineer (Chemical, Civil, Electrical, etc.)

Environmental Consultant

Geologist

Optician  
Optometrist  
Osteopath  
Physician  
Podiatrist  
Psychologist  
Public Accountant  
Veterinarian

(t) Recreation and Entertainment. Any person engaged in the business of providing entertainment, recreation or amusement services.

(u) Nonresidential Property Rental. Any person engaged in the business of renting or letting a building or structure of any kind, including warehouses, mini-storage, industrial, commercial, and office buildings to a tenant for purposes other than dwelling, sleeping or lodging. For the purposes of calculating fees, when combining nonresidential and residential property rentals, all property must be under the same ownership.

(v) Residential Property Rental. Any person engaged in the business of conducting or operating an apartment house, single family house rental, duplex, condominium, townhouse, hotel/motel, mobile home park, rooming or boarding house having one or more residential units, excluding for purposes hereof the unit, if any, occupied by the taxpayer. For the purposes of calculating fees, when combining nonresidential and residential property rentals, all property must be under the same ownership.

(w) Retailing. Any person providing or carrying on a business consisting mainly of selling at retail any goods, including restaurants and establishments where meals or refreshments may be procured.

(x) Services. Any person providing services, repairs, or improvements to or on real and personal property; renting or leasing personal property to businesses or persons; providing services to persons such as, but not limited to:

Ambulance  
Appraiser  
Assayer  
Bail Bond Broker  
Barber and Beauty Shops  
Bookkeeping Service  
Claims Adjuster  
Cleaning and Dyeing  
Collection Agency  
Commercial Artist  
Consultant  
Delivery of Goods  
Designer or Decorator  
Detective or Detective Agency  
Draftsman  
Employment Agency  
Escrow Company  
Finance/Loan Company



Gardener  
Health Studio  
Instruction (Dance, etc.)  
Insurance Adjuster/Broker  
Investment Advisor  
Landscape Designer  
Laundries  
Locksmith  
Manufacturer's Representative  
Messenger  
Mortician  
Notary Public  
Outdoor Advertising  
Photographer  
Photographic Processing  
Photographic Studios  
Physio-Therapist  
Public Stenographer  
Real Estate Broker/Agent  
Repair Shops (Automobile, Machine, Tools, etc.)  
Shoe Repair  
Stock/Bond Broker  
~~Storage Warehousing~~  
Surveyor  
Tax Counselor  
Taxicabs  
Taxidermist  
Travel Agency  
X-Ray Laboratory

(y) Solicitor. Any person taking or attempting to take orders from place to place, from house to house or from street to street, for sale of goods, wares and merchandise, personal property or services of any nature whatsoever for future delivery.

(z) Towing. Any person engaged in the business of towing or transporting any motorized or non-motorized vehicle.

(aa) **Warehousing/Storage**. Any person or firm engaged in providing and/or operating warehousing facilities primarily used for the storage and/or consolidating of items such as raw materials, private goods, and the intermediary storage of bulk goods intended for further distribution. This classification includes moving and furniture storage companies.

(aba) Waste Disposal Site. Any person engaged in the business of conducting or operating a landfill, transfer station or collection center for the receipt and processing of household, commercial and industrial solid waste materials.

(abc) **Wholesaling/Distribution - General**. Any person or firm primarily engaged in selling merchandise to retailers; to other wholesalers for resale to individual consumers; or to industrial users for their own consumption or resale to individual consumers. This

classification includes order-processing fulfillment centers, logistics businesses, and other facilities that provide for the repackaging and/or shipment of an on-site inventory of goods and products directly to retail/wholesale customers or retail stores. This classification also includes truck terminals, whose purpose is to provide for the consolidation, division and/or distribution of bulk goods through the use of large trucks and trailers, including cross-dock trucking uses.

(ad) Wholesaling/Distribution – Large Local Seller. Any person or firm which meets the parameters of Wholesaling/Distribution – General and contributes more than \$50,000 in sales tax payable to the City of San Leandro during the prior July 1 through June 30 time period.

B. Section 2-2-265 is amended to read as follows, with deletions in strikethrough and additions in underlined text:

For persons or firms within the Nonresidential Property Rental classification, sSquare feet shall mean all of the space within the exterior walls of the building regardless of use that is rented or intended to be rented. For persons or firms within the Warehousing/Storage or Wholesaling/Distribution classifications, square feet shall mean all of the space within the exterior walls of the building leased or owned by the business regardless of use as substantiated by a lease document, floor plan/blueprint, or other form of documentation approved by the Director of Finance. No business shall be deemed to be less than one unit fee.

C. Section 2-2-320 is amended to read as follows, with additions in underlined text:

Cannabis businesses will receive their annual business licenses upon payment of any and all applicable cannabis business tax as required by the Municipal Code.

D. The table in Title 2, Chapter 2-2, Section 2-2-500 shall be amended as follows, with deletions in strikethrough and additions in underlined text:

2-2-500 FEES BASED ON NATURE OF BUSINESS.

| <b>Business Classification</b>                        | <b>Annual Base Fee</b> | <b>Unit Fee</b> | <b>Unit Fee Basis</b>                   |
|---|------------------------|-----------------|---|
| Retailing*  | \$128.20               | \$38.50         | Per each Owner and each Employee        |
| <u>Wholesaling/Distribution – Large Local Seller*</u> | <u>128.20</u>          | <u>38.50</u>    | <u>Per each Owner and each Employee</u> |
| <u>Wholesaling/Distribution – General</u>             | <u>128.20</u>          | <u>100.00</u>   | <u>Per 1,000 Square Feet</u>            |
| <u>Warehousing/Storage</u>                            | <u>128.20</u>          | <u>100.00</u>   | <u>Per 1,000 Square Feet</u>            |

| <b>Business Classification</b> | <b>Annual Base Fee</b> | <b>Unit Fee</b> | <b>Unit Fee Basis</b>            |
|--------------------------------|------------------------|-----------------|----------------------------------|
| Manufacturing*                 | 128.20                 | 38.50           | Per each Owner and each Employee |
| Peddler/Solicitor*             | 128.20                 | 38.50           | Per each Owner and each Employee |
| Services*                      | 128.20                 | 77.10           | Per each Owner and each Employee |
| Professional*                  | 128.20                 | 96.40           | Per each Owner and each Employee |
| Contractors*                   | 128.20                 | 77.10           | Per each Owner and each Employee |
| Recreation and Entertainment*  | 128.20                 | 77.10           | Per each Owner and each Employee |
| Residential Property Rental    | 128.20                 | 11.60           | Per Unit or Space                |
| Nonresidential Property Rental | 128.20                 | 19.20           | Per 1,000 Square Feet            |
| Dance Hall                     | 642.30                 | -               | Flat/Annual                      |
| Automobile Wrecking            | 642.30                 | -               | Flat/Annual                      |
| Christmas Trees/Pumpkin Patch  | 642.30                 | -               | Flat/Annual                      |
| Commercial Advertising         | 642.30                 | -               | Flat/Annual                      |
| Fortunetelling                 | 642.30                 | -               | Flat/Annual                      |
| Secondhand Dealer              | 642.30                 | -               | Flat/Annual                      |
| Pawnbroker                     | 642.30                 | -               | Flat/Annual                      |
| Itinerant Merchant             | 128.20                 | 39.80           | Flat/Weekly                      |
| Carnival                       | 128.20                 | 231.10          | Flat/Daily                       |
| Coin-Operated Device           | 128.20                 | 1.20            | Per \$1,000 of Gross Receipts    |
| Public Utilities*              | 128.20                 | 38.50           | Per each Owner and each Employee |
| Miscellaneous*                 | 128.20                 | 38.50           | Per each Owner and each Employee |
| Bingo                          | 128.20                 | -               | Flat/Annual                      |
| Waste Disposal Site            | 128.20                 | 1.73            | Per Ton                          |
| Towing                         | 128.20                 | 1.20            | Per \$1,000 of Gross Receipts    |

| <b>Business Classification</b> | <b>Annual Base Fee</b> | <b>Unit Fee</b> | <b>Unit Fee Basis</b>   |
|--------------------------------|------------------------|-----------------|---|
| Firearms Dealer                | 128.20                 | 3.90            | Per \$100 of Gross Receipts attributable to the sales of firearms capable of being concealed upon the person and ammunition for such firearms, excluding sales to public agencies |
| Parking Lot                    | 128.20                 | <u>100.00</u>   | Per <u>\$1,000 of Gross Receipts</u> Parking Space  |
| Mobile Food Vendors            | 128.20                 | -               | Flat/Annual   |

The business license fees established by this section shall continue to be adjusted annually by an amount equal to the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco-Oakland-San Jose metropolitan area, as published by the U.S. Department of Labor, Bureau of Statistics.

\* Businesses with locations in the City of San Leandro with three (3) or fewer owners and/or employees that are in business classifications that are charged a per employee/owner unit fee must pay only the annual base fee and no per employee unit fee.

E. Section 2-2-303 is amended as follows, with deletions in strikethrough and additions in underlined text:

A separate license must be obtained for each separate business on the same premises. Each license shall authorize the licensee to transact and carry on only the business licensed thereby at the location or in the manner designated in that license; ~~provided, however, that w~~Warehouses and distributing plants used in connection with, and incidental to, a business licensed under this Chapter are deemed to be separate businesses for the purposes of this section.

**SECTION 3: Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of

the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

**SECTION 4: Publication and Effective Date.** This Ordinance shall take effect immediately after approval of the ballot measure related hereto..



# City of San Leandro

Meeting Date: July 18, 2016

## Resolution - Council

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**File Number:** 16-384

**Agenda Section:** ACTION ITEMS

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Chris Zapata  
City Manager

**FINANCE REVIEW:** Not Applicable

**TITLE:** RESOLUTION Establishing November 8, 2016 as the Date for a Municipal Election on a Proposed Ballot Measure Seeking Voter Approval to Increase the City's Existing Transient Occupancy Tax for General Fund Purposes from Ten Percent (10%) to Fourteen Percent (14%), Establishing Policies and Procedures in Connection with Such an Election, and Requesting that the Alameda County Registrar of Voters Conduct Such an Election, and Requesting that the City Attorney Prepare and File an Impartial Analysis of the Proposed Ballot Measure

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**WHEREAS**, on November 21, 1983, pursuant to its authority under California Revenue and Taxation Code section 7280 et seq., the City Council of the City of San Leandro ("the City Council") adopted Ordinance No. 83-033, codified as Title 2, Chapter 2-10 of the Municipal Code, which provides for the imposition and collection of a general excise tax on the privilege of using hotel accommodations in the City (a "transient occupancy tax" or "TOT") to be paid by hotel users and collected by hotel operators; and

**WHEREAS**, Article XIII C, section 2(b) of the California Constitution requires that any general tax, such as the TOT, must be approved by a majority vote of the voters voting on the issue of the increase of the tax; and

**WHEREAS**, the City requires additional revenue to fund important City programs; and

**WHEREAS**, Article XIII C, section 2(b) of the California Constitution requires that an election by the voters to approve a general tax must be consolidated with a statewide general election at which members of the City Council will be elected; and

**WHEREAS**, November 8, 2016 is the date of the statewide general election at which members of the City Council will be elected; and

**WHEREAS**, after considering the foregoing information,, the City Council believes that a four percent (4%) upward adjustment to the TOT should be authorized by the voters of the City for general fund revenue purposes.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN LEANDRO AS FOLLOWS:**

Section 1. Call for Election. Pursuant to Elections Code Section 9222, the City Council hereby calls an election at which it shall submit to the qualified voters of the City of San Leandro, a measure that, if approved, would increase the Transient Occupancy Tax from ten percent (10%) to fourteen percent (14%) to fund general services in the City. This measure shall be designated by letter by the Alameda County Registrar of Voters. Pursuant to Elections Code Section 10400 *et seq.*, the election for this measure shall be consolidated with the established election to be conducted on November 8, 2016.

Section 2. Ballot Language. The ballot language for the proposed measure shall be as follows:

*To maintain and enhance the City of San Leandro, with funding that cannot be taken by Sacramento, including: enhancing library programming for children, more space for books, reference materials and public access computers, enhancing parks and infrastructure, and other general City services, shall the City of San Leandro increase the ongoing transient occupancy tax charged to hotel guests from 10% to 14%, providing \$200,000 annually, requiring independent citizen oversight, financial audits, and all funds staying in the City of San Leandro*

YES      NO

Section 3. Proposed Ordinance. The ordinance authorizing the general tax to be approved by the voters pursuant to Section 2 is as set forth in **Attachment 1** attached hereto. The type of tax proposed by the ordinance is an amendment to the City's existing transient occupancy tax, which is a general tax. The ordinance specifies that the existing tax rate would be adjusted from 10% of the room rate to 14%. The full text of the ordinance shall be printed in the voter information guide. Pursuant to California Government Code Section 53724(b), this Resolution, including the approval of the submission of the proposed Ordinance (attached as **Attachment 1**) must be approved by a two-thirds vote of all members of the City Council.

Section 4. Publication of Measure. The City Clerk is hereby directed to cause notice of the measure to be published once in a newspaper of general circulation in the City in accordance with Section 12111 of the Elections Code and Section 6061 of the Government Code.

Section 5. Request to Consolidate and Conduct Election and Canvass Returns.

(a) The City Council hereby requests that the Alameda County Board of Supervisors consolidate the election called by this resolution with the statewide election to be conducted

on November 8, 2016 and order the election to be conducted by the Registrar of Voters. The City Clerk is directed to file a certified copy of this resolution with the Board of Supervisors of Alameda County and the Registrar of Voters of Alameda County on or before \_\_\_\_\_.

(b) The election on the measure set forth in Section 2 shall be held and conducted, the voters canvassed and the returns made, and the results ascertained and determined as provided for herein. In all particulars, the election shall be held in accordance with the Elections Code of the State of California.

(c) The election on the measure set forth in Section 2 shall be held in Alameda County in the City of San Leandro on November 8, 2016, as required by law, and the Board of Supervisors of Alameda County is authorized to canvass the returns of the election with respect to the votes cast in the City of San Leandro and certify the results to the City Council of the City of San Leandro.

(d) At the next regular meeting of the City Council of the City of San Leandro occurring after the returns of the election for the measure set forth in Section 2 have been canvassed and the certification of the results to the City Council, the City Council shall cause to be entered in its minutes a statement of the results of the election.

(e) The City Council acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418.

**Section 6. Submission of Ballot Arguments and Impartial Analysis.**

(a) The last day for submission of direct arguments for or against the measure shall be by 5:00 p.m. on \_\_\_\_, August \_\_\_\_, 2016.

(b) The last day for submission of rebuttal arguments for or against the measure shall be by 5:00 p.m. on \_\_\_\_, August \_\_\_\_, 2016.

(c) Direct arguments shall not exceed three hundred words and shall be signed by not more than five persons.

(d) Rebuttal arguments shall not exceed two hundred fifty words and shall be signed by not more than five persons; those persons may be different persons than the persons who signed the direct arguments.

(e) The City Attorney shall prepare by \_\_\_\_, August \_\_\_\_, 2016, an impartial analysis of the measure showing the effect of the measure.

(f) The Mayor (and Council Member or Vice Mayor) (or Council Members \_\_\_\_\_) is/are hereby authorized to file a written argument in favor of the proposed measure, not to exceed three hundred words, on behalf of the City Council. At the Mayor's discretion, the argument may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote. In the event that an argument is filed against the measure, the Mayor and Vice Mayor/Council Member are also authorized to file a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or bona fide associations or by individual voters who are



eligible to vote, which may be different from those who signed the direct argument.

(g) Pursuant to California Elections Code Section 9285, when the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument that it seeks to rebut.

Section 7. Appropriation of Necessary Funds. The City Manager is hereby authorized and directed to appropriate the necessary funds to pay for the City's costs of placing the measure on the election ballot.

Section 8. Services of City Clerk. The City Clerk is hereby authorized and directed to take all steps necessary to place the measure on the ballot and to cause the ordinance or measure to be printed. A copy of the ordinance or measure shall be made available to any voters upon request.

Section 9. Compliance with California Environmental Quality Act. The approval of this resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). The tax proposed by this resolution is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the City would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.

2678285.1

**An ORDINANCE of the City of San Leandro Amending Title 2, Chapter 2-10 of the San Leandro Municipal Code Relating to Transient Occupancy Tax**

Now, therefore, the City Council of the City of San Leandro does ordain as follows:

**SECTION 1. Amendments.** Section 2-10-110 is hereby amended to read as follows, with deletions in strikethrough and additions in underlined text:

For the privilege of occupancy in any hotel, including but not limited to any inn, motel, or time-share facilities, each transient is subject to and shall pay a tax in the amount of ~~ten~~ fourteen (~~10~~ 14) percent of the rent charged by the operator. Such tax constitutes a debt owed by the transient to the City which is extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Finance Director may require that such tax be paid directly to the Finance Director.

**SECTION 3: Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

**SECTION 4: Publication and Effective Date.** This Ordinance shall take effect immediately after approval of the ballot measure related hereto.



# City of San Leandro

Meeting Date: July 18, 2016

## Resolution - Council

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**File Number:** 16-386

**Agenda Section:** ACTION ITEMS

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Chris Zapata  
City Manager

**FINANCE REVIEW:** Not Applicable

**TITLE:** RESOLUTION Appropriating \$65,000 for the City Manager or his designee to conduct public outreach and share unbiased, factual information related to revenue measures that may be appearing on the November 2016 ballot (approves \$65,000 in General Fund appropriations from the economic uncertainty reserves to account number 010-12-020-5120)

.....Body

WHEREAS, on July 18, 2016 the San Leandro City Council adopted resolutions authorizing ordinances that will ask San Leandro voters to authorize various new revenue measures as part of the November 2016 election ballot; and

WHEREAS, in order to help ensure that San Leandro voters are aware of these revenue measures and understand the factual components related thereto, the City Council is considering whether to direct the City Manager to conduct public outreach efforts in advance of the election; and

WHEREAS, this work could consist of the production of a mailer(s), written or electronic publications, or various other communications (including the cost of postage) containing factual, non-partisan, unbiased information that may be distributed or shared with San Leandro residents or posted on the City's website, at a cost not to exceed \$65,000.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That \$65,000 is hereby appropriated from the City's General Fund Economic Uncertainty Reserve to account number 010-12-020-5120 for the purposes described above.

BE IT FURTHER RESOLVED: That the City Manager is hereby authorized to

expend said funds in a manner consistent with the above purposes.

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WHEREAS, on July 18, 2016 the San Leandro City Council adopted resolutions authorizing ordinances that will ask San Leandro voters to authorize various new revenue measures as part of the November 2016 election ballot; and

WHEREAS, in order to help ensure that San Leandro voters are aware of these revenue measures and understand the factual components related thereto, the City Council is considering whether to direct the City Manager to conduct public outreach efforts in advance of the election; and

WHEREAS, this work could consist of the production of a mailer(s), written or electronic publications, or various other communications (including the cost of postage) containing factual, non-partisan, unbiased information that may be distributed or shared with San Leandro residents or posted on the City's website, at a cost not to exceed \$65,000.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That \$65,000 is hereby appropriated from the City's General Fund Economic Uncertainty Reserve to account number 010-12-020-5120 for the purposes described above.

BE IT FURTHER RESOLVED: That the City Manager is hereby authorized to expend said funds in a manner consistent with the above purposes.