



City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
June 21, 2022

TOPIC: Voter Ballot Measure Resolution for the November 8, 2022 General Municipal Election to Restructure Non-Cannabis Business License Tax Rates and Chapter 21 of the Santa Ana Municipal Code

AGENDA TITLE:

Direct Staff to Place a Proposed Santa Ana Business License Tax Equity and Flexible Tax Holiday Voter Ballot Measure for Public Consideration at the November 8, 2022 General Municipal Election; Adopt a Resolution, Authorize and Designate City Councilmembers to File an Argument; Direct City Attorney to File an Impartial Analysis; and Other Related Documents Calling for a General Municipal Election and Consolidating it with the Statewide General Election

RECOMMENDED ACTION

1. Adopt a Resolution of the City Council of the City of Santa Ana calling for the placement on the ballot of a measure for the November 8, 2022 General Municipal Election for the submission to the qualified voters of a proposed Ordinance regarding a business license tax equity and flexible tax holiday measure and providing for the filing of Argument and Rebuttal Statements.
2. Request that the Board of Supervisors of Orange County Consolidate the City's General Municipal Election with the Statewide General Election.
3. Authorize the filing of Arguments and Rebuttals.
 - a. Designate up to five (5) Councilmembers to author an Argument and Rebuttal Statement.
4. Direct the City Attorney to prepare an Impartial Analysis.
5. Direct the Clerk of the Council to publish legal notices as required by law.

DISCUSSION

At the May 17, 2022 City Council Meeting, staff presented to City Council a proposed Voter Ballot Measure for the November 8, 2022, General Election to accomplish the following:

1. Restructure non-cannabis business license tax rates and charges, to improve tax equity among all business sizes, with the aim of achieving an overall net revenue neutral result, designed to reflect current best practices and to recognize the impact of home-based businesses and the new “gig” economy.
2. Provide a flexible Tax Holiday period for unlicensed, past due, or under-assessed businesses to obtain a valid business license or satisfy unpaid or unassessed taxes.
3. Align with closely associated provisions of the City of Santa Ana’s Business License Tax Code, Santa Ana Municipal Code (“SAMC”) Chapter 21.

The current business license tax rate structure of the SAMC Chapter 21 favors large businesses, whose contributions to the City are indirectly subsidized by medium and small businesses, whose effective tax rates are considerably higher than large businesses due to the steeply regressive nature of the gross receipts tax rate schedules originally adopted. The intent of the proposed restructuring of the City’s non-cannabis business license tax rates is to effectively achieve such a proportional rate structure that is both simpler and more equitable to medium and small businesses, home-based businesses, and independent contractors and free-lancers.

Furthermore, on May 17, 2022, City Council approved staff’s recommended three-part phased approach comprised of: (1) a leading consolidation Ordinance of Rates and Schedules; (2) the adoption of a Voter Ballot Measure; and (3) a trailing cleanup Reconciliation Ordinance, that would accomplish the following:

- I. **Phase One** was the Consolidation Ordinance, which was presented to City Council for adoption and first read on June 7, 2022. The Consolidation Ordinance includes the adoption of a consolidated Rates and Schedules to unify all non-cannabis tax rates, schedules, and charges currently contained in Articles V through X of SAMC Chapter 21, respectively, into a single article (Article X) for clarity and cohesion.
- II. **Phase Two** is the Voter Ballot Measure Resolution and Ordinance. The Resolution would give notice of a General Municipal Election to be held in the City of Santa Ana on November 8, 2022 for the submission of a Ballot Measure to the qualified voters of a proposed Ordinance restructuring non-cannabis business licensing rates. The proposed Ordinance would act to convert all regular brick and mortar businesses, excepting warehouses, state licensed contractors, itinerant businesses, and various miscellaneous independent contractors from a steeply regressive set of gross receipts tax rate structures to a proportional set of single gross receipts tax rates. The Ordinance includes reduced minimum basic tax rate amounts and a maximum gross receipts tax cap amount.

As part of **Phase Two**, staff recommended ending several voluntary business license tax “exclusions/exemptions” given under SAMC Chapter 21 for public utilities making franchise payments to the City and for private physicians maintaining patient offices on hospital premises in the City. Staff, however, also recommended establishing a special public policy tax “exemption” for individuals providing immediate and extended family member in-home childcare services.

- *Elimination of tax exclusion for public utilities making franchise payments.* Franchise payments relate directly to public utilities’ authorization to work in the public right of way. The 1905 Broughton Act and the Franchise Act of 1937 authorize granting a franchise to a public utility to use public streets and highways for public utility purposes. The franchise granted is not a general authorization to do business or to use anything other than public streets and highways. Thus, public utility franchisees are not excluded by state statute from City business license requirements even though they pay an annual franchise fee to the City for use of the public right of way. Their exclusion from Santa Ana business license taxation has been entirely a voluntary one, granted by City ordinance that reflected an earlier desire to facilitate the expansion of public utility services in the first half of the last century. Excepting Santa Ana, only one other of California’s most populous 13 cities (Riverside) grants such an exclusion.
- *Elimination of exemption for private physicians maintaining patient offices on hospital premises.* The exemption for private physicians maintaining patient offices on hospital premises also reflected an earlier model for the provision of hospital care where hospitals were organized on a nonprofit basis and hence were deemed nontaxable. The exemption for hospitals was extended to include all medical services provided by doctors having admitting rights to said hospitals. The nature of hospitals has changed significantly over time so that such facilities are no longer non-profit. For this reason, a system that exempts physicians from normal business license requirements because of the location of their office within the City is no longer justifiable and results in unequal treatment opposite other physicians.
- *Establishment of a family member childcare exemption.* An equitable exception, however, is justifiable in the case of individuals providing childcare services to their own immediate and extended family members residing within the City. Staff recommended that public policy should endeavor to maximize the provision of in-home childcare services, especially when provided by one Santa Ana family member to another.

Staff also recommended a conversion in business license tax assessment methodologies, minor adjustments to flat and variable flat rates for all other businesses, and removal of a small number of obsolete business type categories.

- *Conversion of tax assessment methodologies.* Convert ambulance services, professional offices (doctors, engineers, attorneys, accountants, etc.), and pawnbrokers and vehicles for hire (buses, limousines, etc.) from variable and fixed flat rates to single gross receipts.

In addition to a changeover in assessment methodologies, minor adjustments to flat and variable rates for all other businesses, removal of a small number of obsolete business type categories, and the adjustment of business license exclusions/exemptions to better reflect current circumstances and public policy aims, staff recommended the adoption of a flexible Tax Holiday Program.

- *Establishment of a flexible Tax Holiday Program.* The purpose of a Tax Holiday Program would be to allow a flexible period (which will vary based on a business' tax status and assessment period) for unlicensed, past due, or under-assessed businesses to obtain a valid business license or satisfy unpaid or unassessed taxes. This is desirable as the proposed restructuring of non-cannabis business license tax rates and tax methodologies will result in a substantial portion of the City's underground economy become willing to surface and become legitimate licensed businesses, contributing annually to the maintenance of the City's marketplace infrastructure. A Tax Holiday allows for two forms of tax reconciliation: (1) unlicensed businesses may shed their past tax liability by fully licensing themselves and paying all tax obligations for the current year; and (2) licensed businesses who are past due for the current year or who have been under-assessed may come current with their tax obligations without penalty. Staff recommended that the Tax Holiday Program be for a period of not less than 12 months. Staff also recommended that the commencement and conclusion of the flexible Tax Holiday Program be at the administrative discretion of the City Manager. In exercising this discretion, staff recommended that the program conform to the differing tax periods reflecting participating businesses' underlying business license tax assessment categories.

As part of **Phase Two**, annual Cost Price Index ("CPI") adjustment of gross receipts tax rates will cease with the adoption of the proposed of proportional rates. However, annual CPI adjustment of the minimum basic gross receipts tax rate amount, application and renewal processing charges, and other miscellaneous charges, together with flat rates, and In Lieu Deposit amounts will continue as these rates, charges, and amounts will otherwise erode in value over time due to the effect of inflation. Proportional rates do not require adjustment as they rise and

fall with the volume of business done and so naturally account for inflationary/deflationary effects. Flat rate tax assessments are recommended to continue for business types where long standing customary industry practice and ease of customer compliance and City administration warrant; e.g. state-licensed contractors, residential rentals, home occupations, free-lance independent contractors, etc.

- III. **Phase Three** is a Reconciliation Ordinance; to be adopted after the approval by Santa Ana voters of the Voter Ballot Measure, which would act to comprehensively reconcile the procedural processes of the Business License Tax Code to successfully administratively implement **Phase Two** (approved Voter Ballot Measure).

Therefore, staff recommends that the City Council adopt the resolution necessary to place the Voter Ballot Measure before the voters of Santa Ana to : (1) restructure non-cannabis business license tax rates and charges to improve tax equity among all business sites, with the aim of achieving an overall net revenue neutral result designed to reflect current best practices, and to recognize the impact of home-based businesses and the new “gig” economy; and (2) provide a flexible Tax Holiday period for unlicensed, past due, or under-assessed businesses to obtain a valid business license or satisfy unpaid or unassessed taxes; and (3) align with closely associated provisions of SAMC Chapter 21 to the voters of Santa Ana. By placing the measure on the ballot, the City Council is not endorsing or taking a position, but rather asking the voters of Santa Ana to consider improving business licensing tax equity among all business sizes, reflect current best practices, recognize the impact of home-based businesses and the new “gig” economy, and to provide a flexible tax holiday period. If approved by the voters, the measure is intended to have a revenue-neutral fiscal impact to the City.

ENVIRONMENTAL IMPACT

There is no environmental impact associated with this action.

FISCAL IMPACT

The Voter Ballot Measure is intended to be revenue neutral, but there will be an expense associated with placement of a Voter Ballot Measure on the November 8, 2022 General Election Ballot, which is a budgeted expense. Staff confirmed with the Clerk of the Council the latest estimate of \$100,000 for the ballot question.

Funds are budgeted and made available in the following accounts for the specified year:

Fiscal Year	Accounting Unit-Account #	Fund Description	Accounting Unit, Account Description	Amount
FY 22-23	01107031-62300	Clerk of the Council – Admin.	Contract Services-Professional	\$100,000

EXHIBIT(S)

1. Resolution

Submitted By: Kathryn Downs, FMSA Executive Director

Approved By: Kristine Ridge, City Manager