



Memorandum

**TO: RULES & OPEN
GOVERNMENT
COMMITTEE**

FROM: Councilmember Johnny Khamis
Councilmember Pam Foley

**SUBJECT: MEDICAL MARIJUANA
BUSINESS TAX
EXEMPTION**

DATE: October 22, 2020

APPROVED:

DATE 10/22/2020

RECOMMENDATION:

Direct Staff to explore, analyze, and report back to City Council on an option to exempt medical marijuana card holders from paying the City Marijuana Business Tax (MBT).

The report to Council shall include a comparison of the projected financial impacts to MBT revenue collection between the following alternatives:

- 1) If all medical marijuana card holders are exempted
- 2) If all medical marijuana card holders who can prove San José residency are exempted.

BACKGROUND:

As originally envisioned, and as understood by the San José constituency that voted to approve Measure U in 2010, the marijuana business tax was enacted with the purpose of generating General Fund revenues to support police, fire, parks maintenance, and other City spending priorities.

The MBT was incorporated into the new regulatory framework that developed throughout the decade that moved the City toward a policy governing marijuana consumption that reflected the ongoing movement to decriminalize and regulate marijuana products.

However, in the decriminalization/legalization process, the MBT & Measure U made no distinction between recreational and medicinal usage. Additionally, with increasing local and state taxation, the cost of legal marijuana products has become prohibitive to some buyers. There is some evidence that these increasing taxes – particularly the recent increase in the State tax - is undermining the legal industry and incentivizing the purchase of illicit, unregulated, untested,

and often unsafe products. This, in turn, impairs our ability to capture tax revenue from legal purchases.

To help rectify the financial burden on San José residents who depend on marijuana for medicinal purposes, as opposed to recreational use, we wish to explore eliminating the MBT for medical purchases. The City Council is empowered to modify or eliminate the MBT per the San José Municipal Code, Title 4 - Chapter 4.66 - Part 2 (4.66.250):

“the City Council may, in its discretion, at any time by ordinance, implement a lower tax rate for all cannabis businesses or establish differing tax rates for different categories of cannabis businesses, as defined in such ordinance, subject to the maximum rate of ten percent (10%) of gross receipts. - San Jose Municipal Code (4.66.250)”¹

We encourage our colleagues to move this memo forward so that Staff may begin to research this issue and bring proposals back to the City Council for consideration and action.

¹ San Jose Municipal Code 4.66.250 - https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT4REFIBUTA_CH4.66CABUTA_PT2GETAPR_4.66.250AMBUTAOW