



## Legislation Text

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Staff Report for City of San Leandro City Council Resolution Authorizing a Consulting Services Agreement with MuniServices/Avenu Insights & Analytics for Annual Cannabis Business Audit Services and Associated Appropriation of \$102,000 from the General Fund Unrestricted Fund Balance to be Paid for by Annual Operating Permit Fees

### **SUMMARY AND RECOMMENDATIONS**

Staff recommends the City Council approve the proposed resolution authorizing the City Manager to execute an agreement with MuniServices/Avenu Insights & Analytics for Cannabis Business Audit Services and approval of an associated appropriation of \$102,000 from the General Fund Unrestricted Fund Balance to be Paid for by Annual Cannabis Dispensary Permit Fees.

### **BACKGROUND**

In November 2016, Measure NN (the "Cannabis Business Tax") was approved by a majority of San Leandro voters, enacting new cannabis business tax provisions as part of Chapter 2-21 of the Municipal Code. The City Council subsequently certified the election results on December 19, 2016. The measure permits the City to impose a gross receipts tax on all businesses located within the City that use the cannabis plant as part of their business model, at a maximum rate of 10% of annual gross receipts. Measure NN does not legalize or otherwise permit cannabis businesses in San Leandro and the cannabis business tax is in addition to the cost of an annual business license, as well as the annual \$35,000 dispensary operating permit fee that is imposed to recover the City's costs in regulating cannabis dispensary businesses.

Prior to bringing Measure NN before the voters, City officials and staff declared during various public meetings and community events that the intention of the "up to 10%" language of the tax measure was meant to provide flexibility in the rate at which the tax would be imposed. Factors supporting such flexibility include:

- ensuring that local cannabis businesses maintain their competitiveness with other businesses operating in neighboring communities;
- recognition of the significant up-front costs associated with starting up a cannabis business; and
- ensuring that the cumulative federal, state, and local taxes imposed on such businesses would not serve to further incentivize the unregulated market.

Effective July 1, 2020, the following City Council adopted-tax rates are in effect:

- 5% of gross receipts for retail cannabis businesses (i.e. dispensaries)

Due to the Schedule I status of cannabis at the federal level, cannabis businesses across the United States continue to experience significant challenges accessing the nation's federally-regulated banking systems; a large proportion of their sales activity and transactions involve cash. In order to ensure that cannabis businesses are tracking their sales receipts and remitting the appropriate level of tax that is owed to the City, it is common and necessary to conduct annual financial audits of these businesses. Furthermore, such audits were envisioned from the outset of the City Council's decision to authorize cannabis businesses to operate in the City of San Leandro and relevant provisions allowing such audits are already codified in the San Leandro Municipal Code. More specifically, Section 4-33-500-16(b)(5) includes the following requirement:

*The Dispensary shall allow the City or the City's designated agent to access the books, records, accounts and all data relevant to its operations for purposes of conducting an audit or examination to determine compliance with the Municipal Code, Administrative Regulations, conditions of approval, and applicable laws.*

To move forward with the financial audits, staff recommends that the City Council authorize the City Manager to execute the proposed agreement.

### **Analysis**

The proposed services would be provided by Muni Services/Avenu Insights, with partnering support from ICF International. Staff recommends these vendors based upon several factors, including their distinct subject matter expertise as well as San Leandro-specific knowledge that was obtained through previous work supporting San Leandro's cannabis dispensary program. More specifically, ICF International served as San Leandro's lead consultant that supported the implementation and execution of San Leandro's selection process for its three existing cannabis dispensaries. ICF is already well-acquainted with these specific businesses and has previously reviewed and analyzed their business plans and proposals in advance of operating permit issuance.

Avenu Insights also provides similar services for several other cities in California and discussions with the staff members managing those contracts on behalf of those cities indicates they have been satisfied with the services provided. This staff recommendation also follows a competitive Request for Proposals (RFP) process that was conducted in 2019. In response to the City's RFP, three vendors submitted proposals, although one vendor ultimately withdrew their proposal. The remaining two vendors were interviewed, and their references were checked, as noted above. The recommended vendor ultimately demonstrated the optimal combination of relevant work experience and San Leandro-specific knowledge, which forms the basis of staff's recommendation.

Attached to this staff report is a copy of the consultants' proposed scope of work and draft contact. They provide additional details on the annual financial audit and regulatory compliance review services.

### **Fiscal Impacts**

The proposed agreement would not exceed \$102,000 for financial auditing services over a period of two years. The entire cost of these services would be off-set by the annual operating permit fees that are already charged to each of San Leandro's three permitted dispensaries.

### **Budget Authority**

Staff proposes to fund these agreements using appropriations from the General Fund unrestricted fund balance reserve, which will be replenished through the annual licensing fees that are charged to San Leandro's dispensaries. If authorized by the City Council, the appropriation of funds will be transferred to the City Manager's Consulting account number 010-12-020-5120.

### **ATTACHMENTS**

- City Council Resolution Authorizing Proposed Agreement
- Proposed Consulting Services Agreement with Avenu Insights/Muni Services

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