

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

RESOLUTION NO. 2016-103

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

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 Friday, August 12, 2016.

(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 Monday, August 8, 2016

(b) The last day for submission of rebuttal arguments for or against the measure shall be by 5 p.m. on Thursday, August 18, 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 an impartial analysis of the measure by Friday, August 12, 2016

(f) The Mayor is 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.

Introduced by Councilmember Prola and passed and adopted this 18th day of July, 2016,
by the following vote:

Members of the Council:

AYES: Councilmembers Cox, Lee, Lopez, Prola, Reed, Thomas; Mayor Cutter (7)

NOES: None (0)

ABSENT: None (0)

ATTEST: 

Tamika Greenwood, City Clerk

Attachment 1

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.
2-21-700	Notice not required by city.
2-21-800	Tax deemed debt to city.
2-21-900	Deficiency determinations.
2-21-1000	Tax assessment – Nonpayment – Fraud.
2-21-1100	Tax assessment – Notice requirements.
2-21-1200	Tax assessment – Hearing.
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.

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

2-21-200 Purpose and intent.

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

2-21-300 Definitions.

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.

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.

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.

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.

- 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.

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.

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.

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.

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.

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.

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.

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.

