

RESOLUTION NO. 22-097 C.S.

A RESOLUTION OF THE COUNCIL OF THE CITY OF MONTEREY

AMENDING AND RESTATING RESOLUTION 22-087 TO REVISE THE BALLOT MEASURE QUESTION TO REFLECT THE MAXIMUM TAX RATES THAT THE CITY CAN IMPOSE ON COMMERCIAL CANNABIS ACTIVITY

WHEREAS, the City of Monterey imposes license taxes upon businesses in the city;

WHEREAS, these business license taxes are imposed to raise revenue and not for regulation;

WHEREAS, the ordinance attached hereto as Exhibit "A" and incorporated herein by reference would impose a business license tax on persons engaged in commercial cannabis activity in the City;

WHEREAS, pursuant to Section 2.6 of Article 2 of the City Charter and Section 9222 of the California Elections Code, the City Council may submit the Ordinance directly to the voters;

WHEREAS, pursuant to Section 2.3 of Article 2 of the City Charter, the City Council adopted Resolution 22-087 C.S. at a properly noticed meeting on June 28, 2022 to call a general municipal election for November 8, 2022, at which voters will consider adopting the Ordinance to impose a general tax on commercial cannabis activity in the city as well as other offices and questions that may properly come before voters;

WHEREAS, this amendment is necessary to revise the ballot measure question to reflect the maximum rates that the City can impose on commercial cannabis activity should the measure be approved, rather than the initial (minimum) rates;

WHEREAS, the City of Monterey determined that calling the election is not a project as defined by the California Environmental Quality Act (CEQA) (CCR, Title 14, Chapter 3 (CEQA Guidelines), Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent projects resulting from this action will be assessed for CEQA applicability; and

WHEREAS, the City of Monterey determined that the proposed commercial cannabis business license tax is exempt from CEQA because it can be seen with certainty that there is no possibility that its enactment would have a significant effect on the environment (Pub. Resources Code 21065, CEQA Guidelines 15378(b)(4), 15061(b)(3) and because the Ordinance involves the approval of government revenues to fund existing services (Pub.

Resources Code 21080, subd. (b)(8); CEQA Guidelines 15273(a)(4). It does not make any commercial activity lawful nor commit the City to fund any particular activity.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Monterey that:

1. The above recitals are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.
2. The City Council hereby calls a general municipal election on November 8, 2022 and submits the attached Ordinance to the qualified voters of the city to impose a general tax on commercial cannabis activity in the City.
3. The type, rate, and method of collection of the tax are set forth in the Ordinance, the full text of which shall be printed and made available to voters pursuant to Sections 9119 and 9223 of the California Elections Code.
4. The ballot label for the proposed Measure shall be submitted for a “Yes” or “No” vote as follows:

Measure _____.

Cannabis Business License Tax. Shall the measure to impose an annual cannabis (marijuana) business license tax of up to 8% of gross receipts from retail businesses, 2% of gross receipts from testing laboratories, and 6% of gross receipts from other cannabis businesses, with an additional tax on highly potent products, generating about \$604,000 to \$1.3 million a year, with all funds staying local and subject to audit, and effective until repealed by voters, be adopted?	YES
	NO

5. The City Council requests that the Board of Supervisors of Monterey County (the “County”) consolidate the Election with the statewide general election to be held on that date.
6. The City Clerk is authorized and directed to file a certified copy of this Resolution with the Board of Supervisors and Chief Election Official of the County.
7. The City Attorney is authorized and directed to prepare an impartial analysis of the measure as required by section 9280 of the California Elections Code.
8. The Mayor is authorized to select two members of the City Council to prepare a written argument, not to exceed 300 words, in favor of the Measure on behalf of the City Council, as specified in section 9282 of the California Elections Code. If an argument is filed against the Measure, the Mayor is also authorized to select two members of the City Council to prepare a written rebuttal.

9. Arguments against the Measure may not exceed 300 words and must be submitted to the City's elections official in compliance with 9282 and 9283 of the California Elections Code by the deadline the Elections Official establishes as authorized by law.

10. Rebuttal arguments are hereby authorized and may not exceed 250 words and must be submitted to the city's elections official as specified in section 9285 of the California Elections Code. This paragraph 10 applies only to the November 8, 2022 general municipal election and shall have no effect thereafter.

11. Pursuant to Charter section 2.3, the following elective offices shall be submitted to qualified voters of the city at the General Municipal Election to be held on Tuesday, November 8, 2022:

- a. One (1) Mayor for a two (2) year term, representing the City of Monterey at large;
- b. One (1) Council Member for a four (4) year term, representing District 1; and
- c. One (1) Council Member for a four (4) year term, representing District 2.

12. Notice of the Election is hereby given and the City Clerk shall give such further notice of the Election as required by law.

13. The City acknowledges that the consolidated election will be held and conducted in the manner prescribed by Elections Code section 10418.

14. The City Clerk is authorized and directed to take all other steps necessary to conduct the election.

15. The City Manager is authorized and directed to appropriate the funds necessary to fund the Election and to execute an agreement with Monterey County to conduct the election.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 19th day of July, 2022, by the following vote:

AYES:	5	COUNCILMEMBERS:	Albert, Haffa, Smith, Williamson, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

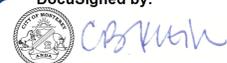
APPROVED:

ATTEST:

DocuSigned by:

FA1981217DDE4EB

 Mayor of said City

DocuSigned by:

ED8459A4F62C4AA...

 City Clerk thereof

EXHIBIT A

ORDINANCE NO. ____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF MONTEREY

**ADOPTING ARTICLE 6 OF CHAPTER 19 OF THE MONTEREY CITY
CODE IMPOSING A CANNABIS BUSINESS LICENSE TAX**

Be it ordained by the People the City of Monterey as follows:

SECTION 1. CODE AMENDMENT. Article 6 of Chapter 19 of the Monterey City Code is hereby adopted to read as follows:

CANNABIS BUSINESS LICENSE TAX

19-121 - Title.

This article shall be referenced as the “City of Monterey Cannabis Business License Tax.”

19-122 - Purpose.

This ordinance is adopted to achieve the following purposes, among others, and shall be interpreted to accomplish them:

- A. To impose an excise tax on the privilege of transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, donating, selling, or distributing cannabis or cannabis products by commercial cannabis businesses in the City, pursuant to the state Medicinal and Adult Use Cannabis Regulation and Safety Act, California Business and Professions Code section 26000, Proposition 64, approved by the voters in November 2016 and as amended to date (“MAUCRSA”), which legalized and regulates adult use of cannabis in California, and other applicable law as it now exists or may hereafter be adopted;
- B. To impose a general tax that generates revenues which may be used for any lawful purpose of the city in the discretion of the City Council;
- C. To specify the type of tax and rate of tax to be levied and the method of its collection; and
- D. To comply with all requirements for imposition of a general tax.

This article is enacted solely to raise revenue, not for regulation. It shall apply to all persons engaged in cannabis business in the city. The tax imposed by this article is a general tax under articles XIII A and XIII C of the California Constitution.

19-123 - Definitions.

For the purposes of this article, the following words shall have the meanings ascribed to them by this section unless the context makes apparent another meaning was intended.

A. "Cannabis" or "marijuana" means all parts of the plant *Cannabis sativa Linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds of such plants. "Cannabis" also means cannabis as defined by Business and Professions Code section 26001, subdivision (f), the Health and Safety Code section 11018, and by other state law.

B. "Cannabis accessory" is any device intended to aid in the use of cannabis or cannabis products which does not itself consist in all or part of cannabis or cannabis products and includes, without limitation, "cannabis accessories" as defined in Health and Safety Code section 11018.2 and by other state law.

C. "Cannabis business" means the activity of any natural or legal person, business, or collective in the City relating to cannabis, including but not limited to transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, delivery and sales (including both wholesale and retail sales) of cannabis, cannabis products, or cannabis accessories, whether or not carried on for gain or profit, whether for medical or adult use, and whether or not such business is licensed by the State. A cannabis business does not include any business the only relationship of which to cannabis or cannabis products is the production or sale of cannabis accessories. A cannabis business does not include commercial cannabis cultivation.

D. "Cannabis product" means any product containing cannabis or its derivatives, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles, and products described in Section 11018.1 of the Health and Safety Code.

E. "Collector" means the City Manager or their designee charged to administer this article.

F. "Commercial cannabis cultivation" means cultivation conducted by, for, or as part of a cannabis business. Commercial cannabis cultivation does not include personal medical cannabis cultivation, or cultivation for personal adult use as authorized by the MAUCRSA, including Health & Safety Code section 11362.1 et seq., for which the cultivator receives no compensation whatsoever.

G. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

H. "Delivery" means the transfer for any form of compensation of cannabis or cannabis products to a customer or caregiver at a location that is not a dispensary.

I. "Dispensary" means a fixed place at which cannabis, cannabis products, or accessories for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including, without limitation, a dispensary that engages in delivery.

J. "Distributor" means a person engaged in procuring cannabis and/or cannabis products for sale to a dispensary, to a business engaged in delivery, or at another point of retail sale. "Distribution" means engaging in that conduct and a "distribution facility" is any real estate, whether or not improved, used in such conduct.

K. "Gross receipts," except as otherwise specifically provided in this code or by regulation authorized by this code, has the meaning stated in Section 19-1 of this code.

L. "High potency" cannabis or cannabis product means cannabis flower containing more than 17% tetrahydrocannabinol (THC), or a cannabis product containing more than 50% THC, excluding edibles containing 10 mg or less of THC per dose.

M. "Manufacturer" means a person who engages in the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

N. "Sweetened cannabis beverage" is a liquid cannabis product containing natural or artificial sweeteners sold in units intended for consumption exceeding one fluid ounce.

19-124 - Cannabis business tax.

A. Beginning January 1, 2023, a cannabis business tax is imposed upon each person who is engaged in business as a cannabis business.

B. The initial rate of the cannabis business tax shall be as follows:

1. For every person who operates a testing laboratory: one percent (1%) of gross receipts.
2. For every person who operates a dispensary or delivery business: four percent (4%) of gross receipts.
3. For every person who engages in a cannabis manufacturing, processing, distribution, or any other cannabis business not described in subdivisions (B) (1) or (2) above: two percent (2%) of gross receipts.

C. The City Council may, by resolution or ordinance, adjust the rate of the cannabis business tax up to the following maxima:

1. For every person who engages in the operation of a testing laboratory, the maximum tax rate shall not exceed two percent (2%) of gross receipts.
2. For every person who engages in the retail sales of cannabis as a dispensary or delivery business, the maximum tax rate shall not exceed eight percent (8%) of gross receipts.
3. For every person who engages in a cannabis manufacturing, processing, distribution, or any other type of cannabis business not described in Section (C) (1) or (2), the maximum tax rate shall not exceed six percent (6%) of gross receipts.

D. In addition, there is hereby imposed on every cannabis business in the City:

1. An additional tax of up to one percent (1%) of the gross receipts from high potency cannabis and each high potency cannabis product cultivated, manufactured, or sold by a taxpayer, multiplied by the percent of tetrahydrocannabinol (THC) content of the product above 17% for cannabis flower and 50% for cannabis products; and,
2. An additional tax of 20% of gross receipts from sweetened cannabis beverages.

E. The City Council may, by resolution, in its discretion, implement a tax rate lower than the maximum rates established in subsections (B) through (D) of this section for all persons engaged in cannabis business, or establish differing tax rates for different categories of cannabis business. The City Council may, by resolution, also decrease or increase such tax rates provided that the tax rate is not above the maximum tax rates established in subsections (B) through (D) of this section.

19-125 - Registration of cannabis business.

A. Each person engaging in a cannabis business, whether an existing, newly established or acquired business, shall register with the City Manager's office by the later of:

1. 30 days after commencing operation, or
2. January 1, 2023,

and shall annually renew such registration on or before the anniversary of the initial registration for that business.

B. Registrants shall furnish to the City Manager a statement sworn under penalty of perjury, upon a form provided by the City Manager, setting forth:

1. Every name under which the business engages in commercial cannabis activity in the city;
2. The names and addresses of every person who is an owner, principal, or manager of the business;
3. The nature or kind of all business activity to be conducted;
4. The place or places, whether or not in the city, where such business is to be conducted; and
5. Any further information which the City Manager may require to administer this article.

C. Registrants shall pay an annual registration fee in an amount established from time to time by resolution of the city council to recover the city's costs to implement the registration requirement of this section, and the other provisions of this article other than the duty to pay tax when due. As a regulatory fee, such fee shall be limited to the city's reasonable costs for those activities. The City Manager may provide by a regulation adopted pursuant to section 19-132 of this article for waivers of the annual registration fee for one or more years for any class of cannabis businesses if such a waiver will facilitate elimination of the illegal market in cannabis in the City or to facilitate participation in the cannabis market by low-income persons.

19-126 - Payment obligations.

All persons subject to a tax under this article shall pay that tax regardless of any rebate, exemption, incentive, or other reduction elsewhere in this code, except as required by state or federal law. Failure to pay such a tax shall be subject to penalties, fines, and interest charges

established under this article and the City may use any or all other code enforcement remedies available at law or in equity to enforce this article. No provision of this code shall be interpreted to reduce a tax rate established under this article or otherwise reduce the taxes paid hereunder unless the provision specifically expresses that reduction.

19-127 - Tax payment does not authorize activity.

The payment of a tax imposed under this article shall not be construed to authorize the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this article authorizes or implies the lawfulness of any activity connected with the distribution or possession of cannabis unless otherwise authorized and allowed in strict and full conformance with this code. Nothing in this article shall be applied or construed as authorizing the sale of cannabis.

19-128 - Cannabis business license tax is not a sales tax.

The tax imposed by this article is an excise tax upon the privilege of doing business within the city. It is not a sales or use tax. Nevertheless, at the option of a commercial cannabis business, the tax may be separately identified on invoices, receipts, and other evidences of transactions.

19-129 - Returns and remittances.

The tax imposed by this article shall be due and payable as follows:

- A. Each person owing tax under this article shall provide a tax return to the City Manager on or before the last business day of each month stating the tax owed for the preceding month and the basis of its calculation. The taxpayer shall remit the tax owed to the City Manager when the return is due.
- B. The City Manager may establish a form for tax returns submitted under this article and, if so, use of that form shall be mandatory.
- C. Tax returns and payments for all outstanding taxes, fees, penalties, and interest owed the city are immediately due upon cessation of business for any reason.
- D. Whenever a payment, statement, report, request, or other communication is received by the City Manager after the time prescribed by this section for its receipt, but is in an envelope postmarked by that time, the City Manager shall regard such payment, statement, report, request, or other communication as timely. If the due date falls on a day when city offices are not open for business, the due date shall be the last business day before that due date.
- E. Unless otherwise specifically provided by this article, the taxes imposed by this article shall be delinquent if not paid by the due date specified in subsection (A) of this section.
- F. The City Manager need not send a delinquency or other notice or bill to any person subject to a tax or fee imposed by this article and failure to send such notice or bill shall not affect the validity of any tax, fee, interest, or penalty due under this article.

19-130 - Audits.

The City Manager shall arrange for an annual independent audit of the receipts and expenditures of the taxes imposed by this article. The City Manager shall share that audit report with the city council and make it available for public inspection.

19-131 - Refunds.

- A. No refund shall be made of any tax collected pursuant to this article, except as provided in this section.
- B. No refund of any tax collected pursuant to this article shall be made because of the discontinuation, dissolution, or other termination of a cannabis business.
- C. Any person entitled to a refund of sums paid under this article may elect to have such refund applied as a credit against future obligations under this article.
- D. Whenever any tax, fee, penalty, or interest under this article has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the city, such amount shall be refunded to the person who paid the tax upon a written claim for refund filed with the City Manager within one year of payment of the sum to be refunded.
- E. The City Manager may examine and audit all the books and business records of the claimant to determine eligibility to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of the claimant's books and business records.
- F. A sum erroneously paid under this article due to an error of the city shall be refunded to the claimant in full upon a timely claim. If an error is attributable to the claimant, the city may retain an amount established by resolution of the city council to recover the city's cost to process the claim and refund the balance.

19-132 - Tax administration.

- A. It shall be the duty of the City Manager to collect the taxes, penalties, fees, and perform the duties required by this article.
- B. The City Manager may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent, and terms of this article as they deem necessary to implement or clarify it or to aid in its enforcement. The City Manager shall give notice of those regulations as required for ordinances of the city council and such regulations shall take effect upon such notice unless otherwise provided by a particular regulation.
- C. The City Manager may take such administrative actions as needed to administer this article, including but not limited to:
 - 1. Provide information to any taxpayer about this article;
 - 2. Receive and record all revenues remitted to the city under this article;
 - 3. Maintain records of taxpayer reports and taxes collected under this article;

4. Assess penalties, fines, and interest charges to taxpayers under this article;
5. Determine amounts owed and enforce collection under this article; and
6. Take such other reasonable steps as he or she deems appropriate to enforce this article.

D. The City Council may establish penalties, fines and interest charges related to this article by ordinance or resolution.

19-133 - Appeals.

Any person aggrieved by any decision of the city under this article may appeal to the City Council pursuant to the procedures described in Article 27 of Chapter 38 of this code. The City Council may appoint a hearing officer to hear an appeal and, as the Council may direct, either recommend a decision for the City Council's review or make a final decision for the city. Any such decision on appeal by the City Council or a hearing officer shall be subject to judicial review pursuant to Section 1094.5 of the California Code of Civil Procedure.

19-134 - Consistency with business license tax.

The City Council intends this article to be enforced consistently with the balance of Chapter 19 of this code and any rule or regulation promulgated under that chapter except as provided to the contrary in this article or a regulation adopted pursuant to this article.

19-135 - Constitutionality and legality.

- A. This article is intended to be applied consistently with the United States and California Constitutions, state law, and the city charter. Its tax shall not be applied to cause an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California, to constitute a special tax, or to violate any other applicable law.
- B. Under California Constitution, article XIII B, the appropriation limit for the city is hereby increased to the maximum extent over the maximum period of time allowed under law by the amount of the revenues generated by the tax.

SECTION 2. AMENDMENT. To the extent allowed under Article XIII C of the California Constitution, the City Council may amend this Ordinance without a vote of the People, except that voter approval shall be required for any amendment that would increase, within the meaning of Government Code section 53750, subdivision (h), the tax rate beyond the maximum rates this Ordinance authorizes.

SECTION 3. This Ordinance is exempt from the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 *et seq.*, because it can be seen with certainty that there is no possibility that its enactment would have a significant effect on the environment (Pub. Resources Code 21065, CEQA Guidelines 15378(b)(4), 15061(b)(3) and because the Ordinance involves the approval of government revenues to fund existing services (Pub.

Resources Code 21080, subd. (b)(8); CEQA Guidelines 15273(a)(4). It does not make any commercial activity lawful nor commit the City to fund any particular activity.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The People of the City of Monterey declare that they would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase, or portion of it, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions might be declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE. Under Elections Code sections 9217 and 9122 this ordinance shall take effect 10 days after the City Council certifies its approval by a majority vote (50% + 1) of the electorate voting at the November 8, 2022 general municipal election.

SECTION 6. CERTIFICATION. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

It is hereby certified that this Ordinance was duly adopted by the voters at the November 8, 2022 Election and took effect 10 days following adoption of a resolution declaring the results of the election at a regular meeting of the City Council held on [date] by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Clementine Bonner Klein, City Clerk

Date