

<p><b>MEASURE ___: APPROVE ORDINANCE REGARDING A MARIJUANA/COMMERCIAL CANNABIS BUSINESS LICENSE TAX</b></p>	<p>Yes</p>
<p>Shall Chapter 21 of the Santa Ana Municipal Code be amended to enact both a gross square footage tax of between 25 cents to \$35.00 and a gross receipts tax rate up to 10% for cultivating, manufacturing, distributing, selling or testing cannabis and related products to raise between \$8 to \$12 million to fund public safety, parks, youth and senior services, among other general City services?</p>	<p>No</p>

**-- TEXT OF THE MEASURE --  
PROPOSED ORDINANCE**

**ARTICLE XIII. COMMERCIAL CANNABIS BUSINESSES**

**Sec. 21-132. Purpose.**

This article is required for the purpose of fixing the rate of taxation for commercial cannabis businesses including delivery, distribution, manufacturing, cultivation, testing and retail sales of cannabis and related products. This article does not apply to medical marijuana collectives/cooperatives (also referred to as medicinal cannabis retail businesses) which are subject to a business license tax under article XII of this chapter. The taxes required to be paid under this article are declared to be required pursuant to the taxing power of the City of Santa Ana solely for the purpose of obtaining revenue and are not regulatory permit fees.

**Sec. 21-133. Commercial cannabis businesses—Annual business license tax assessment.**

Every person engaged in a “commercial cannabis business” or “commercial cannabis activity” shall pay an annual business license tax as outlined below. This article shall not apply to medical marijuana cooperatives/collectives also referred to as medicinal cannabis retail businesses which are governed by article XII of this chapter or to personal cultivation as defined in section 18-611(n) of this code.

- (a) For each branch establishment or separate property location of a commercial cannabis business transacted and carried on in the city, and for each separate type of commercial cannabis business conducted at the same location, the higher of the two (2) following tax rates shall be due to the city for each monthly reporting period:
  - (1) Up to ten percent (10%) of each dollar of gross receipts received or generated for each monthly reporting period.
  - (2) Up to \$35.00 per square foot (annual tax rate) prorated monthly to one-twelfth (1/12th) of the annual tax rate amount.

- (b) These tax rates shall not be adjusted for inflation pursuant to section 21-121 of this chapter.
- (c) Notwithstanding the tax rates imposed herein under subsection (a), the city council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may by resolution increase such tax rate from time to time, not to exceed the maximum rates established by subsection (a).
- (d) As of the operative date of this article, the business license gross receipts tax rates and square footage tax rates application to specific commercial cannabis business activities shall be established as follows:

Commercial Cannabis Business Activity	Gross Receipts Tax Rate	Gross Square Footage Tax Rate
Adult-use Cannabis Retail Business (including Delivery)	8%	\$ 25.00
Cultivation	6%	\$ 10.00
Distribution	6%	\$ 4.00
Manufacturing	6%	\$ 10.00
Testing Facility or Testing Laboratory	5%	\$ 1.50

Commercial cannabis businesses not having a fixed place of business within the city but conducting regular, non-incident commercial cannabis business activities within the city shall be subject to the gross receipts tax rate(s) as set out in the table above based on the category/categories of commercial cannabis activity conducted. However, such out-of-town commercial cannabis businesses shall not be subject to any gross square footage tax rate(s).

- (e) As part of the annual gross receipts/square footage tax(es) imposed by this article, each commercial cannabis business located within the city shall pay a minimum basic rate of two thousand dollars (\$2,000.00) annually for each branch establishment or separate property location of the commercial cannabis business transacted and carried on in the city, and for each separate type of commercial cannabis business conducted at the same location. Commercial cannabis businesses having no fixed place of business within the city shall be exempted from this requirement.
- (f) In the event the city should in the future permit additional categories of commercial cannabis business activity, as may from time to time be licensed by the State of California, such categories of commercial cannabis activities shall be subject to the same maximum tax rates as imposed herein. The city may by ordinance of the city council initially set the required gross receipts/gross square footage tax rates

based on category of cannabis business activity at lesser rates as may be deemed appropriate by the city council.

- (g) For purposes of this article, a commercial cannabis business is not considered to be a business or person having a “specified exemption” or “specified exclusion” from business license taxation as set forth in sections 21-48 and 21-49 of this chapter.
- (h) For purposes of this article any person claiming an exemption from the gross receipts tax rate component of the combined gross receipts/square footage tax imposed under this article on the basis of a claim of being a qualified "nonprofit organization" shall have the burden of substantiating their claim to the same extent and in the same manner as a marijuana collective/cooperative in accordance with section 21-127(a)(6) of this chapter.
- (i) Cannabis businesses shall not pass the taxes imposed by this article through to an adult-use cannabis retail business customer or commercial cannabis business customer in any fashion except as part of the basic product sales and/or service price.
- (j) *Definitions.* For purposes of this article, the following terms have the following meanings:
  - (1) “Adult-Use cannabis retail business” as defined in section 40-2(4) of this code.
  - (2) “Commercial Cannabis Activity” as defined in section 40-2(9) of this code.
  - (3) “Commercial cannabis business” as defined in section 40-2(10) of this code excluding medical marijuana collectives/cooperatives also referred to as medicinal cannabis retail sales.
  - (4) “Cultivation” as defined in section 40-2(11) of this code.
  - (5) “Delivery” as defined in section 40-2(13) of this code.
  - (6) “Distribution” as defined in section 40-2(16) of this code.
  - (7) "Gross receipts" – section 21-3 of this chapter notwithstanding, “gross receipts” for the purposes of this article shall mean:
    - (A) Transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration including any monetary consideration for cannabis, including, but not limited to, membership dues, reimbursements provided by members, regardless of form, or the total amount of cash or in-kind contributions, including all operating costs related to the growth, cultivation, manufacturing, distribution, testing, or provision of cannabis or any transaction related thereto.
    - (B) Anything else of value obtained by an a cannabis business;
    - (C) The total amount of the sale price of all sales and services;
    - (D) The total amount charged or received for the performance of any act, service or employment of whatever nature it may be, whether or not such service, act or employment is done as a part of or in connection with the sale of goods, wares, or merchandise (whether at wholesale or retail), for which a charge is made or credit allowed,

including all refunds, cash credits and properties of any amount or nature;

- (E) Any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom, on account of the cost of the property sold, the cost of materials used, the labor or service cost, interest paid or payable, losses, or any other expense whatsoever; provided that cash discounts allowed or payment on sales shall not be included;
- (F) The amount of any federal manufacturer's or importer's excise tax included in the price of property sold, even though the manufacturer or importer is also the retailer thereof and whether or not the amount of such tax is stated as a separate charge.
- (G) The amount of any California state cannabis excise tax or state cannabis cultivation tax regardless of whether or not the amount of such excise tax or cultivation tax is included in the price of the product or stated to customers as a separate charge,
- (H) "Gross receipts" shall not include the following:
  - i. The amount of any federal tax imposed on or with respect to retail or wholesale sales or the sale of services whether imposed upon the cannabis business or the consumer whenever the amount of federal tax is authorized by law to be stated and passed through to customers as a separate charge.
  - ii. Any California state, county, or city sales or use tax, including any add-on, district, or transaction and use tax, required by law to be included in or added to the purchase price and collected from the consumer or purchaser, or such part of the sales price of any property previously sold and returned by the purchaser to the seller which is refunded by the seller by way of cash or credit allowances given or taken as part payment on any property so accepted for resale; or
  - iii. The amount of the sale price of business personal property (all property owned or leased by a cannabis business operator used in the operation cannabis business activities, including but not limited to: furniture, fixtures, and business equipment); real property, including land, buildings and other improvements.
  - iv. The amount of equity contributions, investments, and/or loan proceeds to cannabis business' operation, and/or proceeds from the sale or transfer of cannabis business' retail or commercial cannabis business.
- (I) "Gross receipts" shall be calculated without any deduction on account of any of the following:
  - i. The cost of tangible or intangible property sold or bartered;
  - ii. The cost of materials or products used, labor or service cost, interest paid, losses, or other expense;
  - iii. The cost of transportation of cannabis, or other property or product;

- iv. The amount of any federal or state income or franchise taxes; and
  - v. Any other business costs or expenses, unless otherwise specifically exempted.
- (8) "Manufacturing" as defined in section 40-2(22) of this code.
- (9) "Retail businesses" as defined in section 40-2(40) of this code.
- (10) "Gross Square foot" or "gross square footage" for the purposes of this article shall mean:
  - (A) The gross number of square feet comprising a commercial cannabis business' property location (as confirmed by the corresponding "approved building set" or "approved certificate of occupancy" on file with the City of Santa Ana Planning and Building Agency) whichever is the greater of any square footage indicated.
  - (B) In the case of commercial cannabis businesses licensed by the state to engage in cultivation "gross square foot" or "gross square footage" shall mean the aggregate sum of the number of square feet comprising all areas of the premises under "canopy", whether such sum is greater or lesser than the gross square footage as stated in the "approved building set" or "approved certificate of occupancy".

"Canopy," shall mean the designated area(s) of a premise that will contain mature plants at any point in time. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries. Canopy may be noncontiguous, but each unique area included in the total canopy calculation shall be separated by an identifiable boundary which includes interior walls, shelves, greenhouse walls, hoop house walls, garden benches, hedgerows, fencing, garden beds, or garden plots; and if mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.
- (11) "Testing Facility" or "Testing Laboratory" as defined in section 40-2(44) of this code.
- (12) "Wholesale" as defined in section 40-(46) of this code.
- (k) *Modification, repeal or amendment.* The city council may repeal the ordinance codified in this article, or amend it in a manner which does not result in an increase in the tax or taxes imposed herein, without further voter approval. The city council may likewise by ordinance adopt and add additional provisions to any other article of this chapter and relate them to this article, or amend any existing provisions of any article of this chapter as they may already relate to this article in any manner which does not result in an increase in the tax or taxes imposed herein, without further voter approval. If the city council repeals said ordinance or any provision of this article, it may subsequently reenact it without voter approval, as long as the reenacted ordinance or section does not result in an increase in the tax or taxes imposed herein.

- (l) *Administration—Rules, regulations and guidelines.* In order to aid in the city's collection of taxes due under this article and to ensure that all commercial cannabis businesses are taxed consistently to the best of the city's ability, the collector, with the concurrence of the city attorney, may promulgate rules, regulations, and guidelines, to implement and administer this article including, but not limited to rules, regulations, and guidelines harmonizing other provisions of this chapter with the provisions of this article in any manner not inconsistent with the intent of this article and which does not result in an increase in the tax or taxes imposed herein. The collector may also, with the concurrence of the city attorney, interpret or clarify the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this article.
- (m) *Occasional transactions—Exemptions.*
  - (1) The provisions of this article shall not apply to persons having no fixed place of business within the city who come into the city for the purpose of transacting a specific item of commercial cannabis business at the request of a specific client or customer, incidental to a commercial cannabis business principally established elsewhere, provided that such person does not come into the city for the purpose of transacting such business on more than three (3) days during any calendar year.
  - (2) For any person not having a fixed place of business within the city who comes into the city for the purpose of transacting commercial cannabis business activities, the business license tax(es) payable by such person may be apportioned by the collector in accordance with this chapter.
- (n) *Reporting and remittance.*
  - 1. Beginning as set forth in subsection (q) below, and monthly thereafter, each commercial cannabis business required to pay a tax or taxes based on gross receipts under this article (except qualified nonprofit organizations exempt from taxes measured by income or gross receipts), shall report to the city any gross receipts received during the preceding monthly reporting period. In addition, each cannabis business (including qualified nonprofit organizations) required to pay a tax or taxes based on square footage shall report to the city the gross square footage of the cannabis business' property location. Every cannabis business shall then compute the business license taxes at both the gross receipts rate and the gross square footage rate - prorated monthly to one-twelfth (1/12th) of the annual tax rate amount - and shall then remit to the city the amount of the higher of the two tax calculations due and owing during said period in accordance with section 21-133, subsection (d). In the case of a qualified nonprofit organization only the gross square footage computation shall be made and the amount of such calculation shall represent the amount due and owing during said period. All reporting and remitting made shall be done in accordance with instructions from the collector and shall be made using forms provided or approved by the collector.

2. For purposes of this section, month shall mean calendar month and shall include any fraction of a month. Taxes shall begin to accrue on the date that a person or entity first receives a business license or other city permit to operate as a commercial cannabis business or upon the operative date of this article should a person or entity already possess a commercial cannabis business license or other city permit to operate as a commercial cannabis business.
  3. The payment of the two thousand dollars (\$2,000.00) minimum basic rate gross receipts tax required annually for each separate branch location or separate property location of the business in accordance with this section, shall be made annually prior to the beginning of the fiscal year beginning April first of the current year and expiring on the 31st day of March of the following year. In the case of a new commercial cannabis business the minimum basic rate gross receipts tax shall be paid in advance prior to any new business activity being undertaken. Every new licensee shall pay in advance an amount equal to one-quarter ( $\frac{1}{4}$ ) of the annual minimum basic rate gross receipts tax, for each quarter and fraction of a quarter remaining during the period for which the new license is issued.
- (o) *Delinquent date—Penalty.* Any individual or entity who fails to pay the taxes required by this article when due shall be subject to penalties and interest as set forth in accordance with this chapter. The collector is not required to send a delinquency or other notice or bill to any person subject to the provisions of this article and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this article.
  - (p) *Business license tax certificate—Required.* There are imposed upon all persons engaged in transacting and carrying on any commercial cannabis business activity in the city taxes in the amounts prescribed in this article. It shall be unlawful for any person, either for him or herself or for any other person, to commence, transact or carry on any business in the city without first having procured a business license from the city under this chapter and having paid the taxes set forth in this article, and without complying with any and all applicable provisions contained in this chapter. The carrying on of any commercial cannabis business activity without complying with all the provisions of this article shall constitute a separate violation of this chapter for each and every day that such commercial cannabis activity is so carried on.
  - (q) *Classification of business license assessment type—Term and renewal.* The business license issued to commercial cannabis businesses shall be classed as a gross receipts assessment type, issued for the same term of license as set forth in subsection 21-71(c) of this chapter and shall be subject to renewal in accordance with sections 21-72(c), 21-73(c), and 21-77.
  - (r) *Operative date.* Upon the approval by the majority of the voters of the city at the November 6, 2018 general election, the taxes imposed by this article shall become operative and shall be applied by the collector upon all commercial cannabis businesses.

Sec. 21-134. Payment of tax does not authorize unlawful business.

- (a) The payment of a business tax required by this article, and its acceptance by the city, shall not entitle any person to carry on any commercial cannabis business unless the person has complied with all of the requirements of this code and all other applicable laws, nor to carry on any commercial cannabis business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such commercial cannabis business is in violation of any law.
- (b) No tax paid under the provisions of this article shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any legal business in an illegal manner, or any business in violation of any ordinance of the city, state or federal law.

Sec. 21-135. Single property location; multiple state licenses; separate city business licenses.

Sections 21-7, 21-8, and 21-9 of this chapter notwithstanding, separate city business licenses, issuable to commercial cannabis businesses pursuant to this article, shall be required for each separate type of commercial cannabis business activity transacted and carried on at a single city property location for which a commercial cannabis business may seek licensure by the state, or for which a state license has been approved or issued.

Sec. 21-136. Security for collection of commercial cannabis business' business license tax.

To ensure compliance with business license tax payment requirements established pursuant to this article, the collector shall require, beginning on the operative date of this article, that each commercial cannabis business owner (including but not limited to each transferee, assignee, or purchaser of a commercial cannabis business subject to the business licensing requirements of this article) deposit within thirty (30) days such security (per individual business license) in a form acceptable to the collector in an amount not larger than the cannabis business owner's estimated average monthly tax liability as determined by the collector or the sum of ten thousand dollars (\$10,000.00), whichever is the greater. Each new city commercial cannabis business licensee shall upon obtaining their city business license(s) deposit a similar security per business license within thirty (30) days after commencing business.

Sec. 21-137. Effect of state and federal reference/authorization.

Unless specifically provided otherwise, any reference to a state or federal statute in this article or chapter (whether by direct citation or by definitional reference to another chapter of this code) shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or



federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease. Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the city's authorization to collect or impose any tax imposed under this article is expanded or limited as a result of changes in state or federal law, no amendment or modification of this article shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this article.

Sec. 21-138. Violation deemed misdemeanor—Penalty.

Any person violating any of the provisions of this article or any regulation or rule passed in accordance herewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by the maximum penalties provided for in California Penal Code Section 19. The penalties under this section are in addition to any other penalties available pursuant to this code.

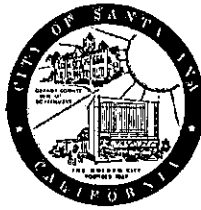
Sec. 21-139. Transferability of commercial cannabis business license.

Section 21-67 of this chapter notwithstanding, business licenses issued to commercial cannabis businesses pursuant to this article shall be transferable or assignable upon presentation of a valid regulatory safety permit issued in the name of the transferee or assignee.

Sec. 21-140. Severability.

Should any provision of this article, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this article or chapter or the application of this article or chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

# REQUEST FOR COUNCIL ACTION

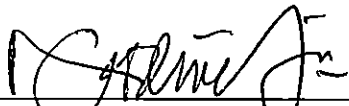


CITY COUNCIL MEETING DATE:

JULY 3, 2018

TITLE:

**DIRECT STAFF TO PLACE A PROPOSED COMMERCIAL CANNABIS BUSINESS LICENSE TAX MEASURE FOR PUBLIC CONSIDERATION ON THE NOVEMBER 6, 2018 BALLOT; APPROVE RESOLUTION, AUTHORIZE AND DESIGNATE CITY COUNCILMEMBERS TO AUTHOR AND FILE ARGUMENT IN FAVOR; AND OTHER RELATED DOCUMENTS CALLING FOR GENERAL MUNICIPAL ELECTION ACCORDINGLY (STRATEGIC PLAN NO. 5, 1)**

  
\_\_\_\_\_  
CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED

- As Recommended
- As Amended
- Ordinance on 1<sup>st</sup> Reading
- Ordinance on 2<sup>nd</sup> Reading
- Implementing Resolution
- Set Public Hearing For \_\_\_\_\_

CONTINUED TO \_\_\_\_\_

FILE NUMBER \_\_\_\_\_

## RECOMMENDED ACTION

Direct staff to move forward with placing a commercial cannabis business license tax measure on the ballot as provided for in staff report, and approve actions accordingly.

1. Adopt Resolution of the City Council of the City of Santa Ana Calling for a General Municipal Election on November 6, 2018 and the Placement on the Ballot of a Measure for the November 6, 2018 General Municipal Election for the Submission to the Qualified Voters of a Proposed Ordinance Regarding a Commercial Cannabis Business License Tax and Requesting that the Orange County Board of Supervisors Consolidate the City's General Municipal Election with the Statewide General Election to Take Place on November 6, 2018; and Providing for the Filing of Argument and Rebuttal Statements
2. Authorize the filing of Arguments and Rebuttal Statements
  - a. Designate up to five (5) Councilmembers to author an Argument and Rebuttal Statement.
3. Direct City Attorney to prepare Impartial Analysis.
4. Direct Clerk of the Council to publish legal notices as required by law.

## DISCUSSION

On November 4, 2014, Santa Ana voters approved Santa Ana's Medical Marijuana Regulatory Program ordinance ("Measure BB") with an overwhelming 66% approval, making Santa Ana the first jurisdiction in Orange County to license and regulate medical marijuana collectives. The Ordinance

(NS-2864), codified in sections of chapters 18 (regulations) and 21 (taxation) of the Santa Ana Municipal Code (SAMC), resulting in the passage of this measure regulated the location, operation and establishment of medical marijuana collectives in the city of Santa Ana. The ordinance provided for the establishment/permitting of 20 medical marijuana collectives and proposed to address the proliferation of illegal marijuana dispensaries throughout the City. This also provided the City with a mechanism to close illegal dispensaries and address associated public health and safety concerns due to a lack of resources. Following the adoption of Measure BB, the City established an implementation plan, enforcement program, administrative policies, and best practices.

In November 2016, the majority of voters in California (57%) and in Santa Ana (52%) approved Proposition 64, the California marijuana legalization initiative, also known as the Adult Use of Marijuana Act (AUMA). The AUMA immediately legalized the possession, use, and cultivation of up to six mature cannabis plants at a residence for personal use. Following Proposition 64's passage, the California legislature adopted SB 94 which merged and streamlined many of the standards and license types for medicinal- and adult-use cannabis. Both Proposition 64 and SB 94 provide for the following types of commercial cannabis activities:

- Laboratory Testing
- Manufacturing/Processing
- Distribution (Wholesale)
- Cultivation
- Retail
- Microbusiness

### **Significance and Enforcement Background**

Following the passage of Proposition 64, local jurisdictions such as the City of Santa Ana (City) were required to adopt an ordinance to establish a regulatory framework for cannabis related activities. If the City failed to adopt an ordinance on commercial cannabis activities by January 1, 2018, the local jurisdictions risked reduced control over local land decisions and commercial cannabis businesses may have been able to operate without requiring local approvals. On November 21, 2017, the City Council adopted an ordinance that created a new chapter (Chapter 40) to regulate adult-use retail cannabis business activities.

The City and its community have benefited from the successes brought by Measure BB. Through Measure BB, the City has been able to responsibly allow and regulate the medicinal cannabis retail industry. Measure BB has generated significant revenue through gross receipts taxes that have funded enforcement efforts by the Santa Ana Police Department, Code Enforcement, the City Attorney's Office, and the Finance & Management Services Agency. Of the roughly 120 illegal dispensaries open prior to Measure BB, 85 percent were successfully shutdown and additional properties are in receivership in an effort to close outstanding illegal operators. In 2017 alone, the enforcement efforts effectively closed 67 illegal dispensary locations.

**Current Regulations Related to Marijuana/Cannabis**

Since its adoption in late 2017, the ordinance has been modified twice in March and April 2018 to allow laboratory testing and non-retail commercial cannabis business activities, including distribution, manufacturing, and cultivation, respectively. The chart below outlines the major regulation elements for Medical Marijuana and Adult Use Cannabis activities in the City of Santa Ana.

<b>Topic</b>	<b>Current Regulations</b>
<b>Permitted Cannabis Uses</b>	Retail Sale – Adult Use Testing for quality control purposes – Adult and Medicinal Indoor Cultivation – Adult and Medicinal Manufacturing Distribution  <ul style="list-style-type: none"> <li>• Medicinal Use Retail Sales will continue to be regulated by Measure BB</li> <li>• All other uses will be regulated through Chapter 40</li> </ul>
<b>Prohibited Cannabis Uses</b>	Outdoor Cultivation – Adult and Medicinal Microbusinesses – Adult and Medicinal
<b>Permitted Zoning Districts</b>	M-1 Light Industrial M-2 Heavy Industrial  Cannabis Businesses are prohibited in all other zoning districts.
<b>Maximum Number of Permits</b>	A maximum number of permits will be issued for the various types of licenses. 30 Retail Sale – Adult No cap Testing for quality control purposes – Adult and Medicinal No cap Indoor Cultivation – Adult and Medicinal No cap Manufacturing No cap Distribution  <ul style="list-style-type: none"> <li>• It is anticipated that a business may hold permits for multiple uses.</li> <li>• Testing facilities cannot hold any other license.</li> <li>• 20 Medicinal Retail Sale permits to continue under Measure BB</li> </ul>
<b>Separation Requirements</b>	1,000 feet From schools, parks or existing residential zoning districts 500 feet Between retail cannabis businesses No separation Between non-retail cannabis businesses

**Direction to Pursue a Ballot Measure for Cannabis Uses**

Following the adoption of the ordinances to regulate Adult Use and Commercial Cannabis, the City Council directed staff to prepare a ballot measure for consideration by the voters to tax the newly allowed uses for the November 6, 2018 ballot. Due to the timing with the passage of Prop 64 and SB 94, there was insufficient time to prepare a ballot measure for adoption by the voters at a primary or general election. Thus, staff recommended that in the interim, any cannabis operators that choose to begin business operations would be required to enter into an Operating Agreement with the City. The Operating Agreement provided for implementation of a community benefits programs, outlined operating requirements, and provided a mechanism to collect fees.

**Proposed Tax and Structure**

When Measure BB was approved by the voters, a gross receipts business license tax was assessed on dispensaries that were permitted to operate in the City. This structure was utilized as the sale of medical marijuana could be captured through the receipt of sale, similar to other type retail uses. To date there are 19 medical marijuana operators in the City. Most opened during calendar years 2016 and 2017, as operator tenant improvements took longer than anticipated. This delay resulted in reduced tax revenue and original revenue projections had to be adjusted.

Staff is recommending new adult use and commercial cannabis, create a base rate utilizing square footage or a gross receipts rate; with only the higher of the two being collected. This will ensure that licenses that are issued will generate a minimum revenue for the City. Additionally, by establishing a base rate for the retail type uses, it encourage operators to begin utilizing a license and delaying their operation from opening.

Every cannabis business, excepting a qualified "nonprofit organization," shall pay a separate business license tax at a rate of up to ten (10) percent of the gross receipts generated or otherwise received for each branch establishment or separate property location of the business or a rate of up to \$35.00 per gross square foot for each branch establishment or separate property location of the business, whichever is greater.

The gross receipts/gross square footage tax shall be initially set based on cannabis business activity at the rates set forth below:

<b>Commercial Cannabis Business Activity</b>	<b>Gross Receipts Rate</b>	<b>Gross Square Footage Rate</b>
Adult-use Cannabis Retail Business	8%	\$ 25.00
Cultivation	6%	\$ 10.00

Distribution	6%	\$ 4.00
Manufacturing	6%	\$ 10.00
Testing Facility or Testing Laboratory	5%	\$ 1.50

As a part of the Fiscal Year 2018/2019 Proposed Budget, staff incorporated the revenue projections from the Operating Agreements and the proposed ballot measure. If the proposed ballot measure is approved by the voters, the Operating Agreements would be modified to eliminate the fee provision. Additionally, allocation of the commercial cannabis has been appropriated 1/3 to youth services reserve appropriations, 1/3 to enforcement reserve appropriations, and 1/3 to the general fund and administration.

**Staff Recommendation**

Staff recommends City Council approve adding the commercial cannabis business license tax measure for public consideration on the November 2018 ballot. This ballot measure, if approved by the voters, will ensure that the revenues generated by the sale and allowable use activities, will be collected and allocated appropriately.


**STRATEGIC PLAN ALIGNMENT**

Approval of this item supports the City's efforts to meet Goal #5 Community Health, Livability, Engagement & Sustainability, Objective #1 (Establish a comprehensive community engagement initiative to expand access to information and create opportunities for stakeholders to play an active role in discussing public policy and setting priorities).

**FISCAL IMPACT**

The County Registrar of Voters office has estimated that the additional cost of adding a ballot measure to the City's consolidated general municipal election would be approximately \$18,000. Funds for these administrative costs are available in the Clerk of the Council, Contractual Services account no. 01107031 62300, FY 2018-2019.

APPROVED AS TO FUNDS AND ACCOUNTS:

  
 \_\_\_\_\_  
 Francisco Gutierrez  
 Executive Director  
 Finance and Management Services Agency



- Exhibits:
1. Resolution of the City Council of the City of Santa Ana Calling for a General Municipal Election on November 6, 2018 and the Placement on the Ballot of a Measure for the November 6, 2017 General Municipal Election for the Submission to the Qualified Voters of a Proposed Ordinance Regarding a Commercial Cannabis Business License Tax and Requesting that the Orange County Board of Supervisors Consolidate the City's General Municipal Election with the Statewide General Election to Take Place on November 6, 2018; and Providing for the Filing of Argument and Rebuttal Statements; and Proposed Ordinance of the City of Santa Ana City Council Adding Article XIII to Chapter 21 of the City of Santa Ana Municipal Code Related to a Commercial Cannabis Business License Tax Imposed for General Municipal Purposes, Subject to the Approval of a Majority of the Voters Voting at the General Municipal Election Held on November 6, 2018.





## RESOLUTION NO. 2018-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA CALLING FOR A GENERAL MUNICIPAL ELECTION ON NOVEMBER 6, 2018 AND THE PLACEMENT ON THE BALLOT OF A MEASURE FOR THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF A PROPOSED ORDINANCE REGARDING A COMMERCIAL CANNABIS BUSINESS LICENSE TAX AND REQUESTING THAT THE ORANGE COUNTY BOARD OF SUPERVISORS CONSOLIDATE THE CITY'S GENERAL MUNICIPAL ELECTION WITH THE STATEWIDE GENERAL ELECTION TO TAKE PLACE ON NOVEMBER 6, 2018; AND PROVIDING FOR THE FILING OF ARGUMENT AND REBUTTAL STATEMENTS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. A general municipal election of the City of Santa Ana will be held on November 6, 2018, for the purposes of electing the Mayor and Councilmembers from Wards 2, 4, and 6.
- B. There will be a statewide general election held on November 6, 2018.
- C. It is desirable that the general municipal election of the City of Santa Ana on November 6, 2018 be consolidated with the statewide general election to be held on the same date and; that within the City of Santa Ana, the precincts, polling places and charter amendment be the same, and that the Board of Supervisors of the County of Orange canvass the returns of both elections, in all respects as if there were only one election.
- D. The Clerk of Council is authorized, instructed, and directed to give further notice of the election, in time, form and manner as required by law.

Section 2. The California Elections Code directs the City Council approve the form of the ballot question to be submitted to the voters and the City of Santa Ana desires, on its own motion, to submit to the voters a question of whether the City should place on the ballot a measure for a proposed Ordinance regarding a commercial cannabis business license tax, to be submitted to the voters at the General Election to be held on Tuesday, November 6, 2018.

Section 3. The ballot question for the proposed Ordinance shall be as follows, with identification as determined in accordance with the California Elections Code:

<u>MEASURE #</u>	Yes
Shall Chapter 21 of the Santa Ana Municipal Code be amended to enact both a gross square footage tax of between 25 cents to \$35.00 and a gross receipts tax rate up to 10% for cultivating, manufacturing, distributing, selling or testing cannabis and related products to raise between \$8 to \$12 million to fund public safety, parks, youth and senior services, among other general City services?	No

Section 4. Should said measure be approved by the requisite vote, the Ordinance adding Article XIII to Chapter 21 attached hereto as Exhibit A and incorporated by this reference shall be enacted.

Section 5. That the text of the Ordinance to be submitted to the voters is attached to this Resolution as Exhibit A and incorporated herein by this reference ("Ordinance").

Section 6. That pursuant to Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the Ordinance to the City Attorney to prepare an impartial analysis of the Ordinance which shall not exceed 500 words in length.

Section 7. That pursuant to Elections Code Section 9282, the City Council may file a written argument in favor of the Ordinance in accordance with Article 4, Chapter 3, Division 9 of the Elections Code and may change the argument as allowed by law.

Section 8. That pursuant to Elections Code Section 9287, if more than one argument for or more than one argument against the Ordinance is submitted to the City Clerk within the time prescribed by law, he or she shall select one of the arguments in favor and one of the arguments against the Ordinance for printing and distribution to the voters, giving preference in such selection in the following order:

1. The City Council, or a member or members of the City Council authorized by the City Council.
2. Bona fide associations of citizens.
3. Individual voters who are eligible to vote on the Ordinance.

Section 9. That pursuant to Elections Code Sections 9220 and 9285, when the City Clerk has selected the arguments for and against the Ordinance which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the Ordinance to the author or authors of the argument against, and copies of the argument against the Ordinance to the author or authors of the argument in favor. The author or authors may submit a rebuttal argument to the direct argument not exceeding 250 words. Rebuttal arguments shall be printed in the same manner as the direct arguments and shall immediately follow the direct argument which it seeks to rebut. All previous resolutions providing for the filing of rebuttal arguments for City measures are repealed, and this Section shall only apply to the election on the Ordinance to be held on November 6, 2018.

Section 10. In accordance with Section 10002 of the Elections Code, the Board of Supervisors Orange County is hereby requested to consent to the Registrar of Voters rendering election services to the City as may be requested by the City Clerk of said City, the County of Orange to be reimbursed in full for such services as are performed. The Board of Supervisors of Orange County is also requested to consent and agree to the consolidation of the General Election with any other election occurring on November 6, 2018, and the City hereby consents to any such consolidation.

Section 11. The election services which the City requests of the Registrar of Voters, or such other official as may be appropriate to perform, and which such officer is hereby authorized and directed to perform if the said Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and polling place cards, the establishment or appointment of precincts, polling places, and election officers, opening and closing of polling places, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for polling places, the canvassing of the returns of the election and the furnishing of the results of such canvassing to the City Clerk, and the performance of such other election services as may be requested by said City Clerk.

Section 12. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, pursuant to California Elections Code Section 10242 and Section 14212, except as provided in California Elections Code Section 14401 or any other provision of law.

Section 13. All persons qualified to vote at municipal elections in the City on the day of the election herein provided for shall be qualified to vote on the Ordinance hereby submitted at the General Municipal Election.

Section 14. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding general municipal elections in the City.

Section 15. Notice of the time and place of holding the General Municipal Election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in the time, form and manner as required by law.

Section 16. The City Clerk shall receive the canvass as it pertains to the General Municipal Election, and shall certify the results to this City Council, as required by law.

Section 17. If any section, subsection, sentence, clause, phrase or provision of this Resolution or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other provision or applications, and to this end the provisions of this Resolution are declared to be severable. The City Council hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, phrase or provision thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or provisions thereof be declared invalid or unconstitutional.

Section 18. Pursuant to California Elections Code section 9295, this Resolution and the attached Ordinance will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the sample ballot. The examination period will end on the day that is seventy-five (75) days prior to the date set for the election.

Section 19. This Resolution shall take effect immediately upon its adoption by a majority of the City Council.

Section 20. The City Clerk of the City of Santa Ana is hereby directed to certify to the passage and adoption of this Resolution and to file a certified copy of this Resolution with the Board of Supervisors of Orange County and the Registrar of Voters of Orange County at least eighty-eight (88) days before the date of the election.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Santa Ana, California, at its regular meeting held on the \_\_\_\_ day of July, 2018, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mayor

ATTEST:

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Maria D. Huizar  
City Clerk

APPROVED AS TO FORM:  
Sonia R. Carvalho  
City Attorney

By: Laura A. Rossini  
Laura A. Rossini  
Senior Assistant City Attorney

CITY OF SANTA ANA PROPOSED ORDINANCE NO. NS-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF SANTA ANA CITY COUNCIL ADDING ARTICLE XIII TO CHAPTER 21 OF THE CITY OF SANTA ANA MUNICIPAL CODE RELATED TO A COMMERCIAL CANNABIS BUSINESS LICENSE TAX IMPOSED FOR GENERAL MUNICIPAL PURPOSES, SUBJECT TO THE APPROVAL OF A MAJORITY OF THE VOTERS VOTING AT THE GENERAL MUNICIPAL ELECTION HELD ON NOVEMBER 6, 2018

WHEREAS, in November 2016, the California Marijuana Legalization Initiative, also known as the Adult Use of Marijuana Act (AUMA or Proposition 64) was approved by the voters of the State of California. The AUMA legalized recreational marijuana.

WHEREAS, in 2017, the Governor signed into law Senate Bill 94 also known as Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) establishing state regulations and licensing for retail sales, manufacturing, distribution, delivery and testing of adult-use (also called recreational) marijuana.

WHEREAS, on November 9, 2017, the City Council created Chapter 40 of the Santa Ana Municipal Code, allowing adult-use commercial cannabis retail businesses in the city, and amended certain sections of Chapters 18 and 21 of the Santa Ana Municipal Code to ensure consistency with State law and Chapter 40. Since 2014, the City has allowed medicinal marijuana collectives/cooperatives to operate within the City pursuant to regulations set forth in Chapter 18 and Chapter 21 of the Santa Ana Municipal Code.

WHEREAS, on March 20, 2018, the City Council adopted Ordinance NS-2941 and NS-2942, allowing and regulating commercial cannabis testing laboratories.

WHEREAS, on May 1, 2018, the City Council adopted Ordinance NS-2944 allowing and regulating commercial cannabis manufacturing, distribution, and cultivation.

WHEREAS, a general business license tax based on the gross receipts derived from commercial cannabis businesses and gross square footage would generate essential funds for protecting vital City services and facilities and place such businesses on more equal footing with existing City businesses, including medical marijuana businesses which already pay a business license tax; and

WHEREAS, the City Council is authorized to impose general and special taxes in order to fund municipal services and facilities, subject to requisite voter approval as set forth in Government Code section 53720.

NOW, THEREFORE, the City of Santa Ana City Council does hereby ordain as follows:

SECTION 1. Recitals. The above recitals are hereby found to be true and accurate and are incorporated into this Ordinance by this reference.

SECTION 2. Amendment. Article XIII is hereby added to Chapter 21 of the City of Santa Ana Municipal Code to read in full as set forth in Exhibit A-1, attached hereto and incorporated by reference.

SECTION 3. Voter Approval. Article XIII as added to Chapter 21 of the Santa Ana Municipal Code by this proposed Ordinance shall impose a general tax as defined by Government Code section 53723, and therefore must be approved by a majority of voters voting in an election on the tax. Approval of this Ordinance is therefore subject to and conditioned upon the approval by the voters of the imposition of the general tax imposed by this Ordinance. If a majority of the voters voting in the election do not vote in favor of the imposition of the tax, this ordinance shall not take effect.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions of applications of the Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 5. Effective Date. After its adoption by the voters, this Ordinance shall be in full force and effect ten (10) days after the vote is declared by the legislative body, pursuant to the provisions of Elections Code sections 9217 and 15400 and as provided by law.

PASSED, APPROVED, and ADOPTED by the People of the City of Santa Ana this 6th day of November, 2018.

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Miguel A. Pulido  
Mayor

ATTEST:

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Maria D. Huizar  
Clerk of Council



APPROVED AS TO FORM:

Laura A. Rossini

for

Sonia R. Carvalho  
City Attorney

## EXHIBIT A-1

### ARTICLE XIII. COMMERCIAL CANNABIS BUSINESSES

#### Sec. 21-132. Purpose.

This article is required for the purpose of fixing the rate of taxation for commercial cannabis businesses including delivery, distribution, manufacturing, cultivation, testing and retail sales of cannabis and related products. This article does not apply to medical marijuana collectives/cooperatives (also referred to as medicinal cannabis retail businesses) which are subject to a business license tax under article XII of this chapter. The taxes required to be paid under this article are declared to be required pursuant to the taxing power of the City of Santa Ana solely for the purpose of obtaining revenue and are not regulatory permit fees.

#### Sec. 21-133. Commercial cannabis businesses—Annual business license tax assessment.

Every person engaged in a "commercial cannabis business" or "commercial cannabis activity" shall pay an annual business license tax as outlined below. This article shall not apply to medical marijuana cooperatives/collectives also referred to as medicinal cannabis retail businesses which are governed by article XII of this chapter or to personal cultivation as defined in section 18-611(n) of this code.

- (a) For each branch establishment or separate property location of a commercial cannabis business transacted and carried on in the city, and for each separate type of commercial cannabis business conducted at the same location, the higher of the two (2) following tax rates shall be due to the city for each monthly reporting period:
  - (1) Up to ten percent (10%) of each dollar of gross receipts received or generated for each monthly reporting period.
  - (2) Up to \$35.00 per square foot (annual tax rate) prorated monthly to one-twelfth (1/12th) of the annual tax rate amount.
- (b) These tax rates shall not be adjusted for inflation pursuant to section 21-121 of this chapter.
- (c) Notwithstanding the tax rates imposed herein under subsection (a), the city council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may by resolution increase such tax rate from time to time, not to exceed the maximum rates established by subsection (a).

- (d) As of the operative date of this article, the business license gross receipts tax rates and square footage tax rates application to specific commercial cannabis business activities shall be established as follows:

Commercial Cannabis Business Activity	Gross Receipts Tax Rate	Gross Square Footage Tax Rate
Adult-use Cannabis Retail Business (including Delivery)	8%	\$ 25.00
Cultivation	6%	\$ 10.00
Distribution	6%	\$ 4.00
Manufacturing	6%	\$ 10.00
Testing Facility or Testing Laboratory	5%	\$ 1.50

Commercial cannabis businesses not having a fixed place of business within the city but conducting regular, non-incidental commercial cannabis business activities within the city shall be subject to the gross receipts tax rate(s) as set out in the table above based on the category/categories of commercial cannabis activity conducted. However, such out-of-town commercial cannabis businesses shall not be subject to any gross square footage tax rate(s).

- (e) As part of the annual gross receipts/square footage tax(es) imposed by this article, each commercial cannabis business located within the city shall pay a minimum basic rate of two thousand dollars (\$2,000.00) annually for each branch establishment or separate property location of the commercial cannabis business transacted and carried on in the city, and for each separate type of commercial cannabis business conducted at the same location. Commercial cannabis businesses having no fixed place of business within the city shall be exempted from this requirement.
- (f) In the event the city should in the future permit additional categories of commercial cannabis business activity, as may from time to time be licensed by the State of California, such categories of commercial cannabis activities shall be subject to the same maximum tax rates as imposed herein. The city may by ordinance of the city council initially set the required gross receipts/gross square footage tax rates based on category of cannabis business activity at lesser rates as may be deemed appropriate by the city council.

- (g) For purposes of this article, a commercial cannabis business is not considered to be a business or person having a "specified exemption" or "specified exclusion" from business license taxation as set forth in sections 21-48 and 21-49 of this chapter.
- (h) For purposes of this article any person claiming an exemption from the gross receipts tax rate component of the combined gross receipts/square footage tax imposed under this article on the basis of a claim of being a qualified "nonprofit organization" shall have the burden of substantiating their claim to the same extent and in the same manner as a marijuana collective/cooperative in accordance with section 21-127(a)(6) of this chapter.
- (i) Cannabis businesses shall not pass the taxes imposed by this article through to an adult-use cannabis retail business customer or commercial cannabis business customer in any fashion except as part of the basic product sales and/or service price.
- (j) *Definitions.* For purposes of this article, the following terms have the following meanings:
  - (1) "Adult-Use cannabis retail business" as defined in section 40-2(4) of this code.
  - (2) "Commercial Cannabis Activity" as defined in section 40-2(9) of this code.
  - (3) "Commercial cannabis business" as defined in section 40-2(10) of this code excluding medical marijuana collectives/cooperatives also referred to as medicinal cannabis retail sales.
  - (4) "Cultivation" as defined in section 40-2(11) of this code.
  - (5) "Delivery" as defined in section 40-2(13) of this code.
  - (6) "Distribution" as defined in section 40-2(16) of this code.
  - (7) "Gross receipts" – section 21-3 of this chapter notwithstanding, "gross receipts" for the purposes of this article shall mean:
    - (A) Transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration including any monetary consideration for cannabis, including, but not limited to, membership dues, reimbursements provided by members, regardless of form, or the total amount of cash or in-kind contributions, including all operating costs related to the growth, cultivation, manufacturing, distribution, testing, or provision of cannabis or any transaction related thereto.
    - (B) Anything else of value obtained by an a cannabis business;

- (C) The total amount of the sale price of all sales and services;
- (D) The total amount charged or received for the performance of any act, service or employment of whatever nature it may be, whether or not such service, act or employment is done as a part of or in connection with the sale of goods, wares, or merchandise (whether at wholesale or retail), for which a charge is made or credit allowed, including all refunds, cash credits and properties of any amount or nature;
- (E) Any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom, on account of the cost of the property sold, the cost of materials used, the labor or service cost, interest paid or payable, losses, or any other expense whatsoever; provided that cash discounts allowed or payment on sales shall not be included;
- (F) The amount of any federal manufacturer's or importer's excise tax included in the price of property sold, even though the manufacturer or importer is also the retailer thereof and whether or not the amount of such tax is stated as a separate charge.
- (G) The amount of any California state cannabis excise tax or state cannabis cultivation tax regardless of whether or not the amount of such excise tax or cultivation tax is included in the price of the product or stated to customers as a separate charge,
- (H) "Gross receipts" shall not include the following:
  - i. The amount of any federal tax imposed on or with respect to retail or wholesale sales or the sale of services whether imposed upon the cannabis business or the consumer whenever the amount of federal tax is authorized by law to be stated and passed through to customers as a separate charge.
  - ii. Any California state, county, or city sales or use tax, including any add-on, district, or transaction and use tax, required by law to be included in or added to the purchase price and collected from the consumer or purchaser, or such part of the sales price of any property previously sold and returned by the purchaser to the seller which is refunded by the seller by way of cash or credit allowances given or taken as part payment on any property so accepted for resale; or
  - iii. The amount of the sale price of business personal property (all property owned or leased by a cannabis business operator used in the operation cannabis business activities, including but not

limited to: furniture, fixtures, and business equipment); real property, including land, buildings and other improvements.

iv. The amount of equity contributions, investments, and/or loan proceeds to cannabis business' operation, and/or proceeds from the sale or transfer of cannabis business' retail or commercial cannabis business.

(l) "Gross receipts" shall be calculated without any deduction on account of any of the following:

i. The cost of tangible or intangible property sold or bartered;

ii. The cost of materials or products used, labor or service cost, interest paid, losses, or other expense;

iii. The cost of transportation of cannabis, or other property or product;

iv. The amount of any federal or state income or franchise taxes; and

v. Any other business costs or expenses, unless otherwise specifically exempted.

(8) "Manufacturing" as defined in section 40-2(22) of this code.

(9) "Retail businesses" as defined in section 40-2(40) of this code.

(10) "Gross Square foot" or "gross square footage" for the purposes of this article shall mean:

(A) The gross number of square feet comprising a commercial cannabis business' property location (as confirmed by the corresponding "approved building set" or "approved certificate of occupancy" on file with the City of Santa Ana Planning and Building Agency) whichever is the greater of any square footage indicated.

(B) In the case of commercial cannabis businesses licensed by the state to engage in cultivation "gross square foot" or "gross square footage" shall mean the aggregate sum of the number of square feet comprising all areas of the premises under "canopy", whether such sum is greater or lesser than the gross square footage as stated in the "approved building set" or "approved certificate of occupancy".

"Canopy," shall mean the designated area(s) of a premise that will contain mature plants at any point in time. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries. Canopy may be

noncontiguous, but each unique area included in the total canopy calculation shall be separated by an identifiable boundary which includes interior walls, shelves, greenhouse walls, hoop house walls, garden benches, hedgerows, fencing, garden beds, or garden plots; and if mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

(11) "Testing Facility" or "Testing Laboratory" as defined in section 40-2(44) of this code.

(12) "Wholesale" as defined in section 40-(46) of this code.

- (k) *Modification, repeal or amendment.* The city council may repeal the ordinance codified in this article, or amend it in a manner which does not result in an increase in the tax or taxes imposed herein, without further voter approval. The city council may likewise by ordinance adopt and add additional provisions to any other article of this chapter and relate them to this article, or amend any existing provisions of any article of this chapter as they may already relate to this article in any manner which does not result in an increase in the tax or taxes imposed herein, without further voter approval. If the city council repeals said ordinance or any provision of this article, it may subsequently reenact it without voter approval, as long as the reenacted ordinance or section does not result in an increase in the tax or taxes imposed herein.
- (l) *Administration—Rules, regulations and guidelines.* In order to aid in the city's collection of taxes due under this article and to ensure that all commercial cannabis businesses are taxed consistently to the best of the city's ability, the collector, with the concurrence of the city attorney, may promulgate rules, regulations, and guidelines, to implement and administer this article including, but not limited to rules, regulations, and guidelines harmonizing other provisions of this chapter with the provisions of this article in any manner not inconsistent with the intent of this article and which does not result in an increase in the tax or taxes imposed herein. The collector may also, with the concurrence of the city attorney, interpret or clarify the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this article.
- (m) *Occasional transactions—Exemptions.*
- (1) The provisions of this article shall not apply to persons having no fixed place of business within the city who come into the city for the purpose of transacting a specific item of commercial cannabis business at the request of a specific client or customer, incidental to a commercial cannabis business principally established elsewhere, provided that such

person does not come into the city for the purpose of transacting such business on more than three (3) days during any calendar year.

- (2) For any person not having a fixed place of business within the city who comes into the city for the purpose of transacting commercial cannabis business activities, the business license tax(es) payable by such person may be apportioned by the collector in accordance with this chapter.

(n) *Reporting and remittance.*

1. Beginning as set forth in subsection (q) below, and monthly thereafter, each commercial cannabis business required to pay a tax or taxes based on gross receipts under this article (except qualified nonprofit organizations exempt from taxes measured by income or gross receipts), shall report to the city any gross receipts received during the preceding monthly reporting period. In addition, each cannabis business (including qualified nonprofit organizations) required to pay a tax or taxes based on square footage shall report to the city the gross square footage of the cannabis business' property location. Every cannabis business shall then compute the business license taxes at both the gross receipts rate and the gross square footage rate - prorated monthly to one-twelfth (1/12th) of the annual tax rate amount - and shall then remit to the city the amount of the higher of the two tax calculations due and owing during said period in accordance with section 21-133, subsection (d). In the case of a qualified nonprofit organization only the gross square footage computation shall be made and the amount of such calculation shall represent the amount due and owing during said period. All reporting and remitting made shall be done in accordance with instructions from the collector and shall be made using forms provided or approved by the collector.
2. For purposes of this section, month shall mean calendar month and shall include any fraction of a month. Taxes shall begin to accrue on the date that a person or entity first receives a business license or other city permit to operate as a commercial cannabis business or upon the operative date of this article should a person or entity already possess a commercial cannabis business license or other city permit to operate as a commercial cannabis business.
3. The payment of the two thousand dollars (\$2,000.00) minimum basic rate gross receipts tax required annually for each separate branch location or separate property location of the business in accordance with this section, shall be made annually prior to the beginning of the fiscal year beginning April first of the current year and expiring on the 31st day of March of the following year. In the case of a new commercial cannabis business the minimum basic rate gross receipts tax shall be paid in advance prior to



any new business activity being undertaken. Every new licensee shall pay in advance an amount equal to one-quarter ( $\frac{1}{4}$ ) of the annual minimum basic rate gross receipts tax, for each quarter and fraction of a quarter remaining during the period for which the new license is issued.

- (o) *Delinquent date—Penalty.* Any individual or entity who fails to pay the taxes required by this article when due shall be subject to penalties and interest as set forth in accordance with this chapter. The collector is not required to send a delinquency or other notice or bill to any person subject to the provisions of this article and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this article.
- (p) *Business license tax certificate—Required.* There are imposed upon all persons engaged in transacting and carrying on any commercial cannabis business activity in the city taxes in the amounts prescribed in this article. It shall be unlawful for any person, either for him or herself or for any other person, to commence, transact or carry on any business in the city without first having procured a business license from the city under this chapter and having paid the taxes set forth in this article, and without complying with any and all applicable provisions contained in this chapter. The carrying on of any commercial cannabis business activity without complying with all the provisions of this article shall constitute a separate violation of this chapter for each and every day that such commercial cannabis activity is so carried on.
- (q) *Classification of business license assessment type—Term and renewal.* The business license issued to commercial cannabis businesses shall be classed as a gross receipts assessment type, issued for the same term of license as set forth in subsection 21-71(c) of this chapter and shall be subject to renewal in accordance with sections 21-72(c), 21-73(c), and 21-77.
- (r) *Operative date.* Upon the approval by the majority of the voters of the city at the November 6, 2018 general election, the taxes imposed by this article shall become operative and shall be applied by the collector upon all commercial cannabis businesses.

Sec. 21-134. Payment of tax does not authorize unlawful business.

- (a) The payment of a business tax required by this article, and its acceptance by the city, shall not entitle any person to carry on any commercial cannabis business unless the person has complied with all of the requirements of this code and all other applicable laws, nor to carry on any commercial cannabis business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such commercial cannabis business is in violation of any law.

- (b) No tax paid under the provisions of this article shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any legal business in an illegal manner, or any business in violation of any ordinance of the city, state or federal law.

**Sec. 21-135.** Single property location; multiple state licenses; separate city business licenses.

Sections 21-7, 21-8, and 21-9 of this chapter notwithstanding, separate city business licenses, issuable to commercial cannabis businesses pursuant to this article, shall be required for each separate type of commercial cannabis business activity transacted and carried on at a single city property location for which a commercial cannabis business may seek licensure by the state, or for which a state license has been approved or issued.

**Sec. 21-136.** Security for collection of commercial cannabis business' business license tax.

To ensure compliance with business license tax payment requirements established pursuant to this article, the collector shall require, beginning on the operative date of this article, that each commercial cannabis business owner (including but not limited to each transferee, assignee, or purchaser of a commercial cannabis business subject to the business licensing requirements of this article) deposit within thirty (30) days such security (per individual business license) in a form acceptable to the collector in an amount not larger than the cannabis business owner's estimated average monthly tax liability as determined by the collector or the sum of ten thousand dollars (\$10,000.00), whichever is the greater. Each new city commercial cannabis business licensee shall upon obtaining their city business license(s) deposit a similar security per business license within thirty (30) days after commencing business.

**Sec. 21-137.** Effect of state and federal reference/authorization.

Unless specifically provided otherwise, any reference to a state or federal statute in this article or chapter (whether by direct citation or by definitional reference to another chapter of this code) shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease. Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the

amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the city's authorization to collect or impose any tax imposed under this article is expanded or limited as a result of changes in state or federal law, no amendment or modification of this article shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this article.

**Sec. 21-138. Violation deemed misdemeanor—Penalty.**

Any person violating any of the provisions of this article or any regulation or rule passed in accordance herewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by the maximum penalties provided for in California Penal Code Section 19. The penalties under this section are in addition to any other penalties available pursuant to this code.

**Sec. 21-139. Transferability of commercial cannabis business license.**

Section 21-67 of this chapter notwithstanding, business licenses issued to commercial cannabis businesses pursuant to this article shall be transferable or assignable upon presentation of a valid regulatory safety permit issued in the name of the transferee or assignee.

**Sec. 21-140. Severability.**

Should any provision of this article, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this article or chapter or the application of this article or chapter to any other person or circumstance and, to that end, the provisions hereof are severable.