

RESOLUTION NO. 18-113

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY OF EMERYVILLE A MEASURE TO APPROVE A BUSINESS LICENSE TAX ON CANNABIS BUSINESSES AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2018; REQUESTING CONSOLIDATION BY THE ALAMEDA COUNTY BOARD OF SUPERVISORS OF THE ELECTION REGARDING SAID MEASURE WITH THE GENERAL ELECTION TO BE HELD ON THE SAME DATE AND THAT ALAMEDA COUNTY PROVIDE ELECTION SERVICES WITH FULL REIMBURSEMENT BY THE CITY OF EMERYVILLE; SETTING CITY COUNCIL PRIORITY FOR FILING WRITTEN ARGUMENT; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS; AUTHORIZING THE FILING OF REBUTTAL ARGUMENT; CEQA DETERMINATION: EXEMPT PURSUANT TO CEQA GUIDELINES 15378(b)(4) AND 15061(b)(3)

WHEREAS, on November 8, 2016, California voters enacted Proposition 64 to legalize adult recreational use of cannabis and to allow businesses that support such cannabis use to operate legally, subject to regulations imposed by state and local public entities; and

WHEREAS, since then the City of Emeryville has been evaluating its options and working to develop local regulatory policies; and

WHEREAS, adopting such a local commercial cannabis business tax measure in the City of Emeryville will benefit residents of the City by ensuring that cannabis businesses contribute to pay towards the costs associated with allowing this emerging industry to operate in Emeryville, while allowing the City to continue to maintain stable funding for essential City services and continued quality of life; and

WHEREAS, the City recognizes the volatility of the newly-legalized cannabis market and will therefore set limited initial tax rates to balance the financial needs of the City and the desire of the City to support and encourage the industry to engage in a regulated market; and

WHEREAS, neighboring cities have already instituted local cannabis business taxes and a local measure would help ensure the City gets its fair share of local revenue to keep Emeryville clean, safe and well-maintained; and

WHEREAS, such a measure will provide locally-controlled revenue that cannot be taken by the State; and

WHEREAS, such a measure will help to maintain the City's long-term financial stability, with all funds staying local to benefit Emeryville residents and providing locally-controlled revenue to protect public safety services, preserve parks and open space, maintain local transportation services and repair and improve local streets; and



WHEREAS, on July 10, 2018, the City Council considered several revenue measures for the November 2018 ballot, including a Cannabis Business License Tax measure; and

WHEREAS, after considering the staff report on potential revenue measures, as well as public comment, the City Council directed preparation of a Cannabis Business License Tax measure for the November 2018 ballot; and

WHEREAS, on July 24, 2018, at a duly noticed public meeting, City staff presented the City Council with the proposed "ORDINANCE AMENDING SECTION 3-1.124, "ANNUAL BUSINESS TAX BASED ON GROSS RECEIPTS", AND ADDING SECTION 3-1.129, "CANNABIS BUSINESSES", TO CHAPTER 1, "BUSINESS TAXES", OF TITLE 3, "FINANCE", OF THE CITY OF EMERYVILLE MUNICIPAL CODE", attached hereto and incorporated herein by reference as Exhibit "A" (the "Cannabis Business License Tax Ordinance"), which would impose an excise tax on the privilege of conducting business within the City of up to six percent (6%) on all cannabis businesses operating within the City; and

WHEREAS, a general municipal election consolidated with the general election to be held on Tuesday, November 6, 2018, has been called and pursuant to Government Code Section 53724 and Elections Code Section 9222, the City Council desires to submit the Cannabis Business License Tax Ordinance to the qualified electors of the City of Emeryville at the consolidated election; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville does hereby declare, determine and order as follows:

MEASURE TO BE SUBMITTED TO THE VOTERS

Section 2(b) of Article XIII C of the California Constitution (Proposition 218) and Government Code Section 53723 requires that a general tax must be submitted to the voters for approval and Government Code Section 53724(c) requires that *any* tax submitted to the voters for approval shall be consolidated with a statewide primary election, a statewide general election, or a regularly scheduled local election at which all of the electors of the local government or district are entitled to vote, and the City Council desires that the Cannabis Business License Tax Ordinance be submitted to the voters for approval at the general municipal election consolidated with the general election to be held on Tuesday, November 6, 2018.

The full text of the Cannabis Business License Tax Ordinance, attached to this Resolution as Exhibit A, shall be printed in the voter pamphlet. Pursuant to Government Code Section 53724 and Elections Code Section 9222, the City Council hereby submits the Cannabis Business License Tax Ordinance to the voters at the general municipal election consolidated with the general election and orders the following question to be submitted to the voters on the ballot as follows:

<p>“To protect essential municipal services, including repairing public facilities, reducing traffic congestion, and improving pedestrian and bicycle safety; and to support regulation of the cannabis industry, and preserve the City of Emeryville’s long-term financial stability, shall the ordinance to impose a business tax of up to 6% of gross receipts on all cannabis businesses within Emeryville, thereby generating an estimated \$2,000,000 annually for unrestricted general revenue purposes, and which continues until repealed by the voters, be adopted?”</p>	<p>Yes _____</p> <p>No _____</p>
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This question requires the approval of a majority vote of the City of Emeryville electorate voting on the measure at the election to become effective. If this ordinance is approved by the City of Emeryville electorate as outlined above, then this ordinance shall become effective ten (10) days following the date the vote is declared by the City Council in accordance with Elections Code Section 9217; and, be it further

RESOLVED, that on July 10, 2018, the City Council adopted a resolution requesting the Board of Supervisors of the County of Alameda to consolidate the City of Emeryville’s general municipal election for the purpose of electing two (2) Councilmembers with the general election to be held on November 6, 2018, and accordingly, pursuant to the requirements of Elections Code Section 10403, the City Council hereby requests that the consolidated election of November 6, 2018, include the submission of the Cannabis Business License Tax Ordinance measure to the voters of the City of Emeryville; and, be it further

RESOLVED, that the City Council acknowledges that the consolidated election will be held and conducted in the manner prescribed by Elections Code §10418; the City of Emeryville requests the services of Alameda County to conduct said general municipal election and the Board of Supervisors is requested to issue instructions to the County staff to take any and all steps necessary for the holding of a consolidated election; Alameda County and its staff are authorized and instructed to procure and furnish any and all official ballots, notices, printed matter and all supplies and equipment and other necessary items in order to properly and lawfully conduct the election; Alameda County is authorized to canvass the returns of the election, which shall be held in all respects as if there were only one election, and only one form of ballot shall be used; and the City of Emeryville recognizes that additional cost will be incurred by the County by reason of the consolidation of the Cannabis Business License Tax Ordinance measure with the general election and agrees to reimburse the County for any costs that are not reimbursed by the State; and, be it further

RESOLVED, that in accordance with California Elections Code Section 9282, the City Council of the City of Emeryville does resolve, declare, determine, and order that the City Council of the City of Emeryville is authorized to file a written argument in favor of the City measure as specified above, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and to change the argument until and including the date fixed by the City Clerk after which no arguments for or against the City measure may be submitted to the City Clerk; and, be it further

RESOLVED, that in accordance with California Elections Code Section 9282, arguments in favor and against, not exceeding 300 words, shall be filed with the City Clerk no later than **5:00 p.m. on Monday, August 13, 2018**, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the *Form of Statement to Be Filed By Author(s) of Argument*, which can be obtained from the Office of the City Clerk; and be it further

RESOLVED, that in accordance with California Elections Code Section 9280, the City Council directs the City Clerk to transmit a copy of the Cannabis Business License Tax Ordinance measure to the City Attorney, who shall prepare an impartial analysis showing the effect of the measure on the existing law and the operation of the measure; the City Attorney's impartial analysis may not exceed 500 words and shall be filed with the City Clerk no later than **5:00 p.m. on Thursday, August 9, 2018**; and, be it further

RESOLVED, that the City Council has elected to author a ballot argument in support of the Cannabis Business License Tax Ordinance measure, and California Elections Code Section 9285 authorizes the City Council to adopt provisions for the filing of rebuttal arguments for measures submitted at municipal elections; accordingly, when the City Clerk has selected the argument for and against the measure which will be printed and distributed to the voters, the City Clerk shall send a copy of the argument in favor of the measure to the authors of the argument against, and a copy of the argument against to the authors of the argument in favor of the measure immediately upon receiving the arguments. The authors may prepare and submit rebuttal arguments not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument. The rebuttal arguments shall be filed no later than **5:00 p.m. on Thursday, August 23, 2018**, accompanied by the printed names and signatures of the persons submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers. The rebuttal arguments shall be accompanied by the *Form of Statement To Be Filed By Author(s) of Argument*, which can be obtained from the Office of the City Clerk. Rebuttal arguments shall be printed in the same manner as the direct arguments, and rebuttal argument shall immediately follow the direct argument which it seeks to rebut; and, be it further

RESOLVED, that all previous resolutions providing for the filing of rebuttal arguments for city measures are hereby repealed and the provisions of this resolution providing for the filing of rebuttal arguments regarding a city measure to approve a Cannabis Business License Tax Ordinance shall only apply to the election to be held on November 6, 2018, and shall thereafter be repealed; and, be it further


RESOLVED, that should any section, subsection, clause or provision of this resolution for any reason be held to be invalid, then the remainder of the resolution shall be deemed valid, it being expressly declared that this resolution, and each and every section, subsection, clause and phrase hereof would have been prepared, proposed, approved, adopted and/or ratified even if any other section, subsection, sentence, clause or phrase of this resolution were declared invalid; and, be it further

RESOLVED, the City Council hereby finds that the proposed Cannabis Business License Tax Ordinance involves the creation of a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment and thus is not a project subject to the requirements of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) pursuant to CEQA Guidelines Section 15378 (b)(4); additionally, it can be seen with certainty that there is no possibility the adoption and implementation of the ordinance may have a significant effect on the environment, and accordingly the adoption of the ordinance is exempt from the provisions of CEQA pursuant to the "general rule" at CEQA Guidelines Section 15061(b)(3).

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, July 24, 2018, by the following vote:

AYES:	<u>5</u>	Mayor Bauters, Vice Mayor Medina and Council Members Donahue, Martinez and Patz
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

ATTEST:


CITY CLERK


MAYOR
APPROVED AS TO FORM:


CITY ATTORNEY

EXHIBIT “A”

AN ORDINANCE AMENDING SECTION 3-1.124, “ANNUAL BUSINESS TAX BASED ON GROSS RECEIPTS”, AND ADDING SECTION 3-1.129, “CANNABIS BUSINESSES”, TO CHAPTER 1, “BUSINESS TAXES”, OF TITLE 3, “FINANCE”, OF THE CITY OF EMERYVILLE MUNICIPAL CODE

WHEREAS, in 1996 the California voters approved Proposition 215, “The Compassionate Use Act,” which provides that qualified patients may obtain and use marijuana for medical purposes with a physician’s recommendation and will not be subject to certain criminal penalties under state law; and

WHEREAS, in 2003, the state Legislature enacted Senate Bill 420, the “Medical Marijuana Program Act,” as a supplement to The Compassionate Use Act, which allows cities to adopt and enforce rules consistent with the Medical Marijuana Program Act; and

WHEREAS, on October 9, 2015, Governor Brown approved a series of bills commonly referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”), effective January 1, 2016, which established a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis, also known as marijuana; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain activities related to the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis; and

WHEREAS, on November 8, 2016, the voters of the State of California approved Proposition 64, known as the “Control, Regulate and Tax Adult Use of Marijuana Act” (“AUMA”), which establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of recreational cannabis, also known as marijuana; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain activities related to the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis; and

WHEREAS, effective September 1, 2017, the City Council of the City of Emeryville enacted Ordinance No. 17-003 to establish a comprehensive regulatory system governing the manufacture, distribution, processing, storing, testing, labeling, transportation, research and development, delivery and sale of cannabis or cannabis products for commercial purposes within its jurisdiction; and

WHEREAS, the City Council of the City of Emeryville desires to impose a tax on all cannabis businesses that may operate within the City of Emeryville; and

WHEREAS, California Constitution Article XIII C, Section 2(b), provides that no local government may impose a general tax unless and until that tax is submitted to the electorate and approved by a majority vote; now, therefore

THE PEOPLE OF THE CITY OF EMERYVILLE ORDAIN AS FOLLOWS:

SECTION ONE. AMENDING SECTION 3-1.124, “ANNUAL BUSINESS TAX BASED ON GROSS RECEIPTS”, OF CHAPTER 1, “BUSINESS TAXES”, OF TITLE 3, “FINANCE”, OF THE CITY OF EMERYVILLE MUNICIPAL CODE. Section 3-1.124, “Annual Business Tax Based On Gross Receipts”, of Chapter 1, “Business Taxes”, of Title 3, “Finance”, of the City Of Emeryville Municipal Code is hereby amended to read as follows:

Section 3-1.124. Annual Business Tax Based on Gross Receipts.

Every person transacting and carrying on any business within the City of Emeryville, other than those enumerated in Sections 3-1.125, 3-1.126, 3-1.127, 3-1.128 and 3-1.129, shall pay an annual business tax equal to the greater of twenty-five dollars (\$25.00) or one-tenth of one percent (0.10%) of the annual gross receipts of such business.

SECTION TWO. ADDING SECTION 3-1.129, “CANNABIS BUSINESSES”, TO CHAPTER 1, “BUSINESS TAXES”, OF TITLE 3, “FINANCE”, OF THE CITY OF EMERYVILLE MUNICIPAL CODE. Section 3-1.129, “Cannabis Businesses”, is hereby added to Chapter 1, “Business Taxes”, of Title 3, “Finance”, of the City of Emeryville Municipal Code to read as follows:

Section 3-1.129. Cannabis Businesses.

(a) Every person engaged in cannabis business in the City shall pay, for the privilege of operating a cannabis business in the City, a business tax at a rate of up to six percent (6%) of annual gross receipts. The tax under this section shall not be imposed on cannabis businesses unless and until the City Council, by resolution, takes action to set a tax rate not to exceed six percent (6%) of annual gross receipts.

(b) Notwithstanding the maximum tax rate of six percent (6%) of annual gross receipts established under subsection (a), the City Council may, in its discretion, at any time by resolution, implement a lower tax rate for all cannabis businesses or establish differing tax rates for different categories of cannabis businesses, as defined in such resolution, subject to the maximum rate of six (6%) percent of annual gross receipts. The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate of six percent (6%) of annual gross receipts established under subsection (a).

(c) For purposes of this section, cannabis business shall have the same meaning as set forth in Chapter 28 of Title 5 of the City of Emeryville Municipal Code.

SECTION THREE. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby, and to this end the provisions of this Ordinance are declared to be severable.

SECTION FOUR. CODIFICATION. Sections One and Two of this Ordinance shall be codified in the City of Emeryville municipal code. Sections Three, Four, Five and Six of this Ordinance shall not be codified.

SECTION FIVE. COMPLIANCE WITH CEQA. The action to adopt this Ordinance involves the establishment of a business license tax on cannabis businesses and does not involve any commitment to any specific project that may result in a potentially significant impact on the environment and thus is not a “project” subject to the requirements of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) pursuant to CEQA Guidelines Section 15378 (b)(4); additionally, it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment, and accordingly the adoption of this Ordinance is exempt from the provisions of CEQA pursuant to the “general rule” at CEQA Guidelines Section 15061(b)(3).

SECTION SIX. EFFECTIVE DATE. This Ordinance relates to the establishment of a business license tax on cannabis businesses in the City of Emeryville authorized pursuant to the provisions of Article 3.7 of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code (Sections 53720-53730), for unrestricted general revenue purposes, and submitted to the City of Emeryville electorate at an election called for November 6, 2018. This Ordinance may be approved by a majority vote of the City of Emeryville electorate voting on the measure at the election. If this Ordinance is approved by the City of Emeryville electorate as outlined above, then this Ordinance shall become effective ten (10) days following the date the vote is declared by the City Council in accordance with Elections Code Section 9217.

(The foregoing Ordinance, if approved by a vote of the People of the City of Emeryville on November 6, 2018, will be adopted by Declaration of the November 6, 2018 election results by the City Council of the City of Emeryville.)