

ORDINANCE NO. 18-_____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF BENICIA, STATE OF CALIFORNIA, AMENDING TITLE 3 OF THE BENICIA MUNICIPAL CODE TO ADD A NEW CHAPTER 3.33 ENTITLED "CANNABIS BUSINESS TAX"

The People of the City of Benicia, California, **DO HEREBY ORDAIN** as follows:

SECTION 1. ENACTED. That Title 3 of the Benicia Municipal Code is hereby amended to add a new Chapter 3.33, entitled "Cannabis Business Tax", and it shall read as follows:

**Chapter 3.33
CANNABIS BUSINESS TAX**

- 3.33.010 Title
- 3.33.020 General tax.
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- 3.33.240 Conviction for violation – taxes not waived.
- 3.33.250 Violation deemed misdemeanor –penalty.
- 3.33.260 Remedies cumulative.

3.33.010 Title.

This chapter shall be known as the Cannabis Business Tax Ordinance and shall be applicable in the City of Benicia, California, which shall be referred to herein as "city."

3.33.020 Authority and Purpose.

The purpose of this chapter is to adopt a tax, for revenue purposes, pursuant to sections 37100.5 and 37101 of the California Government Code, upon Cannabis Businesses that engage in business in the city. The Cannabis Business Tax is levied based upon business gross receipts and square footage of plant canopy. It is not a sales and use tax, a tax upon income, or a tax upon real property.

The Cannabis Business Tax is a general tax enacted solely for general governmental purposes of the city and not for specific purposes. All of the proceeds from the tax imposed by this chapter shall be placed in the city's general fund and be available for unrestricted general revenue purposes.

3.33.030 Intent.

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

A. To impose a tax on the privilege of cultivating, transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, donating, selling, or distributing cannabis or cannabis products by Cannabis Businesses in the City of Benicia, pursuant to the state Medicinal and Adult-Use Cannabis Regulation and Safety Act, California Business and Professions Code section 26000, Proposition 64, approved by the voters in November 2016 and as amended to date (“MAUCRSA”), which legalized and regulates commercial cannabis activities in California, and other applicable law as it now exists or may hereafter be adopted; and

B. To specify the type of tax and rate of tax to be levied and the method of collection.

This chapter does not authorize the conduct of any business or activity in the city, but provides for the taxation of such businesses or activities as they occur. Nothing in this chapter shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

3.33.040 Definitions.

The following words and phrases shall have the meanings set forth below when used in this chapter:

“Cannabis” shall have the meaning set forth in section 26001(f) of the Business and Professions Code and as subsequently amended.

“Cannabis business” shall have the meaning set forth in section 17.84.020 of the Benicia Municipal Code and as subsequently amended.

“Cannabis product” shall have the same meaning as in section 11018.1 of the Health and Safety Code and as subsequently amended.

“Canopy” shall have the meaning set forth in section 17.84.020 of the Benicia Municipal Code and as subsequently amended.

“Commercial cannabis activity” shall have the meaning set forth in section 17.84.020 of the Benicia Municipal Code and as subsequently amended.

“Commercial cannabis cultivation” shall mean cultivation conducted by, for, or as part of a cannabis business.

“Cultivation” shall mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Employee” shall mean each person who renders any service, with or without compensation, for the owner, permittee, or agent of either an owner or permittee of a commercial cannabis business. For purposes of this chapter, the term “Employee” shall include part-time, full-time, temporary, or permanent employees.

“Engaged in business as a cannabis business” shall mean the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the city or coming into the city from an outside location to engage in such activities. A person shall be deemed engaged in business within the city if:

1. Such person or person’s employee maintains a fixed place of business within the city for the benefit or partial benefit of such person;
2. Such person or person’s employee owns or leases real property within the city for business purposes;
3. Such person or person’s employee regularly maintains a stock of tangible personal property in the city for sale in the ordinary course of business;
4. Such person or person’s employee regularly conducts solicitation of business within the city;
5. Such person or person’s employee performs work or renders services in the city; and

The foregoing specified activities shall not be a limitation on the meaning of “engaged in business.”

“Evidence of doing business” shall mean evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the city.

“Fiscal year” shall mean July 1 through June 30 of the following calendar year.

“Gross Receipts,” except as otherwise specifically provided, shall mean the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however

designated. "Gross receipts" shall include all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. However, the following shall be excluded from Gross Receipts:

1. Cash discounts where allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
5. Cash value of sales, trades or transactions between departments or units of the same business;
6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;
7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;
8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the Tax Administrator with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.
9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters or other personal tangible property which the Tax Administrator has excluded in writing shall not be subject to the cannabis business tax under this chapter. However, any retail sales not subject to this chapter as a result of the administrative ruling shall be subject to the appropriate business tax under any other applicable provision of this code as determined by the Tax Administrator.

"Person" shall mean an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, collective

or any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

“Sale” shall mean any sale, exchange, or barter or other transaction for any consideration.

“Square foot or square footage” shall mean the maximum amount of canopy for commercial cannabis cultivation authorized by a city permit issued to a person engaging in a cannabis business.

“State license” or “license” shall mean a license issued by the State of California, or one of its departments or divisions, pursuant to California Business & Professions Code section 26000, *et seq.* and any subsequent State of California legislation regarding the same, to engage in commercial cannabis activity.

“Tax Administrator” shall mean the city finance director.

3.33.050 Tax Imposed.

A. There is established and imposed upon each person who is engaged in business as a cannabis business an annual cannabis business tax at the rates set forth in this chapter. The tax imposed by this chapter is upon the privilege of conducting business within the city and is not a sales tax or use tax.

B. Tax on commercial cannabis cultivation operations.

There is hereby imposed on every cannabis business engaged in cultivation in the city, an annual tax in an amount established from time to time by resolution of the city which does not exceed either ten dollars \$10 per square foot of cannabis cultivation area or fraction thereof. The maximum square foot tax shall be increased annually (and rounded to the nearest cent) each January 1st based on the year-over-year percentage change in Bureau of Labor Statistics San Francisco-Oakland-Hayward Consumer Price Index – All Urban Consumers (CPI-U) October to October comparison, or if such index is discontinued, a comparable or successor consumer price index designated by the city council. However, no CPI adjustment resulting in a decrease of any tax impose by this section shall be made. The tax shall be due and payable in monthly installments. For purposes of this paragraph (B), the square feet of canopy space for a cannabis business shall be rebuttably presumed to be the maximum square footage of canopy allowed by the cannabis business’s use permit for cannabis cultivation, or, in the absence such a city permit, the square footage shall be the maximum square footage of canopy for cannabis cultivation allowed by the state license type. Should a city permit be issued to a cannabis business which cultivates only for certain months of the year, the city shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the cannabis business. In no case shall canopy square footage which is authorized by the city use permit but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation, unless the Tax Administrator is informed in writing and authorizes such reduction for the purpose of relief from the tax prior to the period for which the space will not be used, that such space will not be used.

C. Tax on all other cannabis businesses.

The cannabis business tax upon every person who engages in business in the city as a cannabis business but is not solely engaged in commercial cannabis cultivation shall not exceed the maximum annual rate of six percent (6%) of the gross receipts.

D. The city council may by resolution, in its discretion, implement tax rates lower than the maximum rates established in subsections (A) through (C) of this section for all persons engaged in a cannabis business in the city, including establishing different tax rates for different categories of cannabis business, including for medical versus adult recreational use or for products of different potencies. The city council may, by resolution, also decrease or increase any such tax rate from time to time, provided that the tax rate shall not, at any time, exceed the maximum tax rates established in subsections (A) through (C) of this section.

3.33.060 Registration, Reporting and Remittance of Tax.

A. All persons engaging in a cannabis business, whether an existing, newly-established or acquired business, shall register with the Tax Administrator's office by the later of:

1. 30 days after commencing operation; or
2. January 1, 2019 and shall annually renew such registration on or before the anniversary of the initial registration for that business.

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

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

C. The cannabis business tax imposed by this chapter shall be imposed on a fiscal year basis and shall be due and payable in monthly installments as follows:

1. Each person owing a cannabis business tax shall, on or before the last day of the month, prepare and submit a tax return statement on the form prescribed by the Tax Administrator, including the basis of its calculation, and remit to the Tax Administrator the tax due.
2. The taxpayer shall remit the tax owed to the Tax Administrator when the return is due whether or not a return is filed as required.
3. The tax due shall be no less than the monthly installment due, but the taxpayer may at any time pay the tax due for the entire fiscal year.
4. Tax statements and payments for all outstanding taxes owed the city are immediately due to the Tax Administrator upon cessation of business for any reason.
5. The Tax Administrator may, at his or her discretion, establish an alternate reporting and payment period for any taxpayer as the Tax Administrator deems necessary to insure collection of the tax.

3.33.070 Payments and communications – timely remittance.

Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday, holiday, or a day City Hall is closed, the due date shall be the next regular business day on which City Hall is open to the public.

3.33.080 Payment - when taxes deemed delinquent.

Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 3.33.060 and 3.33.070.

3.33.090 Notice not required by the city.

The city may as a courtesy send a tax notice to the business however, the Tax Administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

3.33.100 Penalties and interest.

A. Any person who fails or refuses to pay any cannabis business tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to ten percent (10%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one percent (1.0%) per month; and

2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax, plus interest at the rate of one percent (1.0%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one percent (1.0%) per month on the first day of the month for the full month, and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a cannabis business tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any fees, penalties and interest as provided for in this chapter, and any other amount allowed under state law.

3.33.110 Refunds, Credits, and Procedures.

A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in this section.

B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of a business.

C. Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the city under this chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Tax Administrator within one year of the date the tax was originally due and payable.

D. The Tax Administrator, his or her designee or any other city officer charged with the administration of this chapter shall have the right to examine and audit all the books and business records of the claimant to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Tax Administrator to do so.

E. If the cannabis business tax was erroneously paid and the error is attributable to the city, the city shall refund the amount of tax erroneously paid up to one year from when the error was identified. If an error is attributable to the claimant, the city may retain an amount established by resolution of the city council from time to time in an amount sufficient to recover the city's cost to process the claim and refund the balance.

3.33.120 Exemptions from the tax.

A. The provisions of this chapter shall not apply to personal cannabis cultivation as defined in the MAUCRSA or any subsequent state legislation regarding the same. This chapter shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever related to that personal use.

3.33.130 Administration of the tax.

A. It shall be the duty of the Tax Administrator to collect the taxes, penalties, fees, and perform the duties required by this chapter.

B. For purposes of administration and enforcement of this chapter generally, the Tax Administrator may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent, and express terms of this chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Tax Administrator may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide all cannabis business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this chapter;
3. Receive and record all taxes remitted to the city as provided in this chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this chapter;
5. Assess penalties and interest to taxpayers pursuant to this chapter;
6. Determine amounts owed and enforce collection pursuant to this chapter.
7. Take such other reasonable steps as he or she deems necessary and appropriate to enforce this chapter.

3.33.140 Enforcement - action to collect.

A. Any taxes, penalties and/or fees required to be paid under the provisions of this chapter shall be deemed a debt owed to the city. Any person owing money to the city under the provisions of this chapter shall be liable in an action brought in the name of the city for the recovery of such debt. The provisions of this chapter shall not be deemed a limitation upon the right of the city to bring any other action including criminal, civil and equitable actions, based

upon the failure to pay the tax, penalties and/or fees imposed by this chapter or the failure to comply with any of the provisions of this chapter.

B. In addition to any other remedies available under federal, state, or local law, if any amount required to be paid to the city under this chapter is not paid when due, the Tax Administrator may, within four years after the amount is due record a certificate of lien specifying the amount of taxes, fees and penalties due, and the name and address of the individual or business as it appears on the records of Tax Administrator. The lien shall also specify that the Tax Administrator has complied with all provisions of this chapter in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with penalties thereon, constitutes a lien upon all real property in the city owned by the individual or business, or subsequently acquired by the individual or business before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten years from filing of the certificate unless sooner released or otherwise discharged.

C. At any time within four years after any individual or business is delinquent in the payment of any amount herein required to be paid or within four years after the last recording of a certificate of lien under subsection B of this section, the Tax Administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the city under this chapter. The warrant shall be directed to the sheriff and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Tax Administrator may pay or advance to the sheriff, the same fees, commissions and expenses for service provided by law for similar services pursuant to a writ of execution. The Tax Administrator shall approve the fees for publication in the newspaper.

D. At any time within four years after recording a lien against any individual or business, if the lien is not discharged and released in full, the Tax Administrator may forthwith seize any asset or property, real or personal (including bank account), of the operator and sell at public auction the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale. Assets or property of the business subject to seizure and sale subject to this chapter shall not include any assets or property which is exempt from execution under the provisions of Code of Civil Procedure.

3.33.150 Apportionment.

If a business subject to the tax is operating both within and outside the city, it is the intent of the city to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the city. To the extent federal or state law requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The Tax Administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

3.33.160 Constitutionality and legality; Not a Sales Tax

A. This tax is intended to be applied in a manner consistent with the United States Constitution and state law. None of the tax provided for by this chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitution of the United States or the State of California or a violation of any other provision of applicable law.

B. The taxes imposed under this chapter are excises on the privilege of engaging in commercial cannabis activity in the city. It is not a sales or use tax and shall not be calculated or assessed as such. Nevertheless, at the option of a commercial cannabis business, the tax may be separately identified on invoices, receipts and other evidences of transactions.

3.33.170 Audit and examination of records and equipment.

A. The Tax Administrator shall have the power to audit and examine all books and records of persons engaged in cannabis businesses, including both state and federal income tax returns, sales tax returns, or other evidence documenting the gross receipts of persons engaged in cannabis businesses, and, where necessary, all equipment, of any person engaged in cannabis businesses in the city, for the purpose of ascertaining the amount of commercial cannabis tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this chapter.

B. It shall be the duty of every person liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of at least four years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the city, which records the Tax Administrator or his/her designee shall have the right to inspect at all reasonable times.

3.33.180 Other licenses, permits, taxes, fees or charges.

A cannabis business subject to the provisions of this chapter shall also be subject to the business license tax requirements defined in Title 5 of the Benicia Municipal Code. Nothing contained in this chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any other provision of this code or any other ordinance or resolution of the city, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other chapter of this code or any other ordinance or resolution of the city. Any references made or contained in any other chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other chapters of this code.

3.33.190 Payment of tax does not authorize activity.

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

3.33.200 Deficiency determinations.

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within four years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within four years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under section 3.33.220.

3.33.210 Failure to report.

A. Under any of the following circumstances, the Tax Administrator may make and give notice of an assessment of the amount of tax owed by a person under this chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this chapter;
2. If the person has not paid the tax due under the provisions of this chapter;
3. If the person has not, after demand by the Tax Administrator, filed a corrected statement, or furnished to the Tax Administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this chapter; or

B. The notice of assessment shall separately set forth the amount of any tax known by the Tax Administrator to be due or estimated by the Tax Administrator, after consideration of all information within the Tax Administrator's knowledge concerning the business and activities of the person assessed, to be due under each applicable chapter of this Title, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

3.33.220 Tax assessment - notice requirements.

The notice of assessment shall be served upon the person either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Tax Administrator for the purpose of receiving notices provided under this chapter; or, should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purposes of this chapter, a service by mail is complete at the time of deposit in the United States mail.

3.33.230 Tax assessment - hearing, application and determination.

A. Within 30 days after the date of service the person may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the city is not made within the time herein prescribed, the tax assessed by the Tax Administrator shall become final and conclusive.

B. Within 30 days of the receipt of any such application for hearing, the Tax Administrator shall cause the matter to be set for hearing before him or her no later than 30 days after the receipt of the application, unless a later date is agreed to by the Tax Administrator and the person requesting the hearing. Notice of such hearing shall be given by the Tax Administrator to the person requesting such hearing not later than five days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Administrator should not be confirmed and fixed as the tax due. After such hearing, the Tax Administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in section 3.33.120 for giving notice of assessment.

C. The decision of the Tax Administrator under this section may be appealed to the city manager as set forth in chapter 1.44 of the Benicia Municipal Code.

3.33.240 Conviction for violation - taxes not waived.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.

3.33.250 Violation deemed misdemeanor.

Any person violating any of the mandatory provisions of this chapter shall be deemed guilty of a misdemeanor and is punishable therefore as provided in chapter 1.08 of this code.

3.33.260 Remedies cumulative.

The penalties set forth in this chapter are cumulative and in addition to all other remedies, violations, and penalties set forth in the City Municipal Code, or in any other ordinance, laws, rules or regulations of the city, county, or the State of California.

SECTION 2. TAX STATEMENT OF FACTS. This Ordinance creates a business tax on cannabis businesses within the city at a maximum rate of six percent of gross receipts; except that cultivation businesses shall be taxed at a maximum rate of ten dollars per square foot of grow area, and cannabis testing laboratories shall be taxed at a maximum rate that does not exceed two percent of gross receipts. The revenue generated from the collection of such tax may be spent for unrestricted general revenue purposes.

SECTION 3. SEVERABILITY. If any provision, section, paragraph, sentence, phrase or word of this Ordinance is rendered or declared invalid, illegal or unconstitutional by any final action in a court of competent jurisdiction or by reason of any preemptive legislation, such unconstitutionality, illegality or invalidity shall only affect such provision, section, paragraph, sentence, phrase or word and shall not affect or impair any remaining provisions, sections, paragraphs, sentences, phrases or words, or the application of this Ordinance to any other person or circumstance, and to that end, the provisions hereof are severable. It is hereby declared to be the intention of the city that that Ordinance would have been adopted had such unconstitutional, illegal or invalid provision, section, paragraph, sentence, phrase, or word not been included herein.

SECTION 4. AMENDMENT OR REPEAL. This Ordinance may be repealed or amended by the city council without a vote of the people to the extent allowed by law. However, as required by Title XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this chapter. The people of the city of Benicia affirm that the following actions shall not constitute an increase of the rate of a tax:

A. The restoration of the rate of the tax to a rate that is no higher than that set by this chapter, if the city council has acted to reduce the rate of the tax;

B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter; or

C. The collection of the tax imposed by this chapter, even if the city had, for some period of time, failed to collect the tax.

SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT. This Ordinance is exempt from the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., because it can be seen with certainty that there is no possibility that the enactment of this Ordinance would have a significant effect on the environment (Pub. Resources Code § 21065; CEQA Guidelines §§ 15378(b)(4), 15061(b)(3)) and because the Ordinance involves the approval of government revenues to fund existing services (Pub. Resources Code § 21080, subd. (b)(8); CEQA Guidelines § 15273(a)(4)). It does not make any commercial activity lawful nor commit the city to fund any particular activity.

SECTION 6. EFFECTIVE DATE. This ordinance shall become effective on January 1, 2019 if approved by a majority of the voters casting votes on the tax in the election.

SECTION 7. CERTIFICATION AND PUBLICATION. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Benicia voting on the 6th day of November, 2018.

Elizabeth Patterson, ~~Mayor~~
Mayor, City of Benicia, California

per willette

ATTEST:

Lisa Wolfe, ~~City Clerk~~
City Clerk

Date

RESOLUTION NO. 18-75

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY A MEASURE TO ESTABLISH A TAX ON COMMERCIAL CANNABIS ACTIVITIES AT THE GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2018

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

WHEREAS, pursuant to section 1.16.010 of the Benicia Municipal Code, the City shall hold its general municipal election on the first Tuesday after the first Monday in November of each even-numbered year; and

WHEREAS, the City Council desires to submit to the voters at the general municipal election scheduled for Tuesday, November 6, 2018 (the "Election"), a measure establishing a tax on commercial cannabis activities; and

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

NOW, THEREFORE, the City Council of the City of Benicia resolves:

Section 1. That pursuant to Government Code section 36503, and Benicia Municipal Code section 1.16.010, there is called and ordered to be held in the City of Benicia a general municipal election.

Section 2. The City Council orders submitted to the voters a measure for the approval of the Ordinance establishing a tax on commercial cannabis activities at such general municipal election. The type, rate, and method of collection of the tax are set forth in the Ordinance, the full text of which shall be printed and made available to voters pursuant to Section 9223 of the California Elections Code.

Section 3. The complete text of the measure to be submitted to the voters for approval is attached to this Resolution as Exhibit "A," and that the City Clerk shall maintain a copy of the measure and shall make the same available for public inspection upon request. The City Council hereby approves the ordinance attached to this Resolution as Exhibit "A," the form thereof, and its submission to the voters of the City at the November 6, 2018 election.

Section 4. The measure shall be designated by letter by the Solano County Elections Department. The question to appear on the ballot for voter consideration shall be as follows:

<p>Shall the measure establishing a City of Benicia cannabis business tax at annual rates not to exceed \$10.00 per canopy square foot for commercial cannabis cultivation (adjustable for inflation) and 6% of gross receipts for all other cannabis businesses, and estimated to generate approximately \$1.46 million annually in tax revenue until ended by voters, to be spent for unrestricted general revenue purposes, including police, fire and emergency services, parks, recreation, and street maintenance, be adopted?</p>	YES
	NO

Section 5. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority of those casting ballots on the measure unless another threshold is otherwise required by law.

Section 6. The Mayor is authorized to select two members of the City Council to prepare a written argument, not to exceed 300 words, in favor of the measure on behalf of the City Council, as specified in section 9282 of the California Elections Code. At the discretion of the Mayor, the argument may also be signed by members of the City Council or citizen associations or individual voters, subject to sections 9282 and 9283 of the California Elections Code. If an argument is filed against the Measure, the Mayor is also authorized to select two members of the City Council to prepare a written rebuttal, not to exceed 250 words, which also may be signed by members of the City Council or citizen associations or individual voters, subject to sections 9282 and 9283 of the California Elections Code.

Section 7. Ballot arguments and rebuttals shall be filed in accordance with the following:

- A. Arguments against the Measure may not exceed 300 words and must be submitted to the City Clerk in compliance with sections 9282 and 9283 of the California Elections Code by the deadline established by the County elections official as authorized by law.
- B. Rebuttal arguments are hereby authorized and may not exceed 250 words and must be submitted to the City's elections official as specified in section 9285 of the California Elections Code.

Section 8. The City Clerk is hereby directed to transmit a copy of the measure to the City Attorney, who shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure in accordance with Section 9280 of the California Elections Code, and to file that analysis no later than the deadline established by the Solano County elections official.

Section 9. The Board of Supervisors of Solano County is hereby requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the election and to consolidate this ballot measure with any other applicable election conducted on the same day in the City. The Board of Supervisors is further requested to order the County Clerk to set forth in the voter information portion of all sample ballots to be mailed to the qualified electors of the City the full text of the measure and to mail with the

sample ballots to the electors printed copies of the full text of the Ordinance, together with the arguments and rebuttal arguments (if any) for and against the measure.

Section 10. Notice of the Election is hereby given and the City Clerk shall give such further notice of the election as required by law.

Section 11. The City Clerk is hereby directed to file a certified copy of this Resolution with the Solano County Board of Supervisors and the Solano County Elections Department.

Section 12. The City Clerk is authorized and directed to take all other steps necessary to conduct the election on the Measure.

Section 13. The City Manager is authorized and directed to appropriate the funds necessary to fund the cost of the Election.

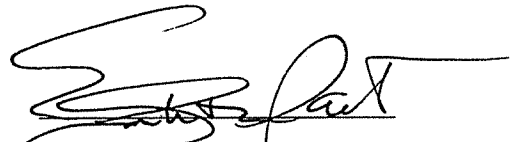
Section 14. This Resolution shall take effect upon its adoption by at least two-thirds of the City Council.

On motion of Council Member **Hughes**, seconded by Council Member **Young**, the above resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council held on the 19th day of June 2018, and adopted by the following vote:

Ayes: **Council Members Campbell, Hughes, Schwartzman, Young, and Mayor Patterson**

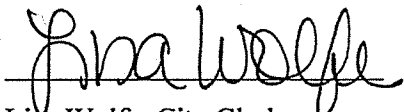
Noes: **None**

Absent: **None**



Elizabeth Patterson, Mayor

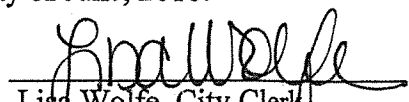
ATTEST:



Lisa Wolfe, City Clerk

6-21-18
Date

I, Lisa Wolfe, City Clerk of the City of Benicia, County of Solano, State of California, hereby certify that the foregoing Resolution was adopted by the City Council of the City of Benicia at a regular meeting held the 19th day of June, 2018.



Lisa Wolfe, City Clerk