

BOARD of SUPERVISORS



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MEMORANDUM

BUDGET AND FINANCE SUB-COMMITTEE SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Malia Cohen, Chair
Budget and Finance Sub-Committee

FROM: Linda Wong, Assistant Clerk

DATE: July 27, 2018

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, July 31, 2018

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting on Tuesday, July 31, 2018, at 2:00 p.m. This item was acted upon at the Sub-Committee Meeting on Thursday, July 26, 2018, at 10:00 a.m., by the votes indicated.

Item No. 64 **File No. 180765**

Motion ordering submitted to the voters, at an election to be held on November 6, 2018, an Ordinance amending the Business and Tax Regulations Code to impose an additional gross receipts tax, starting January 1, 2021, on gross receipts from cannabis business activities, but exempting the first \$500,000 of gross receipts and exempting retail sales of medicinal cannabis; said tax to be between 1% and 5% depending on the type of cannabis business activity and amount of gross receipts, but may be adjusted at any time within a range of 0% to 7% by an ordinance adopted by a two-thirds vote of the Board of Supervisors for any increase (which is limited to 1% annually) or an ordinance adopted by a majority vote of the Board of Supervisors for any decrease; starting January 1, 2019, to expand the conditions that subject a person to certain business taxes by including persons with more than \$500,000 in annual gross receipts in the City; and increasing the City's appropriations limit by the increase in the amount of those business taxes collected compared to the prior year and by the amount collected under the new Cannabis Business Tax, for four years from November 6, 2018.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Malia Cohen - Aye
Supervisor Sandra Lee Fewer - Aye
Supervisor Catherine Stefani - Aye

c: Board of Supervisors
Angela Calvillo, Clerk of the Board
Jon Givner, Deputy City Attorney
Alisa Somera, Legislative Deputy Director

File No. 180765

Committee Item No. 16

Board Item No. 64

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date July 26, 2018

Board of Supervisors Meeting

Date July 31, 2018

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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Completed by: Linda Wong Date July 20, 2018
 Completed by: Linda Wong Date July 27, 2018

1 [Initiative Ordinance - Business and Tax Regulations Code - Additional Gross Receipts Tax on
2 Cannabis; Additional Conditions Subjecting Persons to Business Taxes]

3 **Motion ordering submitted to the voters, at an election to be held on November 6, 2018,**
4 **an ordinance amending the Business and Tax Regulations Code to impose an**
5 **additional gross receipts tax, starting January 1, 2021, on gross receipts from cannabis**
6 **business activities, but exempting the first \$500,000 of gross receipts and exempting**
7 **retail sales of medicinal cannabis; said tax to be between 1% and 5% depending on the**
8 **type of cannabis business activity and amount of gross receipts, but may be adjusted**
9 **at any time within a range of 0% to 7% by an ordinance adopted by a two-thirds vote of**
10 **the Board of Supervisors for any increase (which is limited to 1% annually) or an**
11 **ordinance adopted by a majority vote of the Board of Supervisors for any decrease;**
12 **and, starting January 1, 2019, to expand the conditions that subject a person to certain**
13 **business taxes by including persons with more than \$500,000 in annual gross receipts**
14 **in the City; and increasing the City's appropriations limit by the increase in the amount**
15 **of those business taxes collected compared to the prior year and by the amount**
16 **collected under the new Cannabis Business Tax, for four years from November 6, 2018.**

17
18 **MOVED, That the Board of Supervisors hereby submits the following ordinance to the**
19 **voters of the City and County of San Francisco, at an election to be held on November 6,**
20 **2018.**

21
22 **Ordinance amending the Business and Tax Regulations Code to impose an additional**
23 **gross receipts tax, starting January 1, 2021, on gross receipts from cannabis business**
24 **activities, but exempting the first \$500,000 of gross receipts and exempting retail sales**
25 **of medicinal cannabis; said tax to be between 1% and 5% depending on the type of**

1 cannabis business activity and amount of gross receipts, but may be adjusted at any
2 time within a range of 0% to 7% by an ordinance adopted by a two-thirds vote of the
3 Board of Supervisors for any increase (which is limited to 1% annually) or an ordinance
4 adopted by a majority vote of the Board of Supervisors for any decrease; and, starting
5 January 1, 2019, to expand the conditions that subject a person to certain business
6 taxes by including persons with more than \$500,000 in annual gross receipts in the
7 City; and increasing the City's appropriations limit by the increase in the amount of
8 those business taxes collected compared to the prior year and by the amount collected
9 under the new Cannabis Business Tax, for four years from November 6, 2018.

10
11 NOTE: **Unchanged Code text and uncodified text** are in plain font.
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.
13 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
15 parts of tables.

16 Be it ordained by the People of the City and County of San Francisco:

17 Section 1. Pursuant to Article XIII C of the Constitution of the State of California, this
18 ordinance shall be submitted to the qualified electors of the City and County of San Francisco
19 at the November 6, 2018, consolidated general election.

20
21 Section 2. The Business and Tax Regulations Code is hereby amended by revising
22 Section 6.2-12 of Article 6, to read as follows:
23
24
25

1 **SEC. 6.2-12. NEXUS: “ENGAGING IN BUSINESS WITHIN THE CITY.”**

2 The taxes imposed by Article 12-A (Payroll Expense Tax Ordinance), ~~and~~ Article 12-A-1
3 (Gross Receipts Tax Ordinance), Article 21 (Early Care and Education Commercial Rents Tax
4 Ordinance), and Article 30 (Cannabis Business Tax Ordinance), and the registration fee imposed
5 by Article 12 (Business Registration Ordinance) shall apply to any person engaging in
6 business within the City unless exempted therefrom under ~~such~~said Articles. A person is
7 “engaging in business within the City,” within the meaning of this Article 6, if that person meets
8 one or more of the following conditions:

9 (a) The person maintains a fixed place of business within the City; or

10 (b) An employee, representative, or agent of the person maintains a fixed place of
11 business within the City for the benefit or partial benefit of the person; or

12 (c) The person or one or more of the person’s employees, representatives, or agents
13 owns, rents, leases, or hires real or personal property within the City for business purposes for
14 the benefit or partial benefit of the person; or

15 (d) The person or one or more of the person’s employees, representatives, or agents
16 regularly maintains a stock of tangible personal property within the City, for sale in the
17 ordinary course of the person’s business; or

18 (e) The person or one or more of the person’s employees, representatives, or agents
19 employs or loans capital on property within the City for the benefit or partial benefit of the
20 person; or

21 (f) The person or one or more of the person’s employees, representatives, or agents
22 solicits business within the City for all or part of any seven days during a tax year; or

23 (g) The person or one or more of the person’s employees, representatives, or agents
24 performs work or renders services within the City for all or part of any seven days during a tax
25 year; or

1 (h) The person or one or more of the person's employees, representatives, or agents
2 utilizes the streets within the City in connection with the operation of motor vehicles for
3 business purposes for all or part of any seven days during a tax year; or

4 (i) The person or one or more of the person's employees, representatives, or agents
5 exercises corporate or franchise powers within the City for the benefit or partial benefit of the
6 person; or

7 (j) The person or one or more of the person's employees, representatives, or agents
8 liquidates a business when the liquidators thereof hold themselves out to the public as
9 conducting such business; or:

10 (k) The person has more than \$500,000 in total gross receipts, as the term "gross receipts" is
11 used in Article 12-A-1 of the Business and Tax Regulations Code, in the City during the tax year, using
12 the rules for assigning gross receipts under Section 956.1 of Article 12-A-1.

13
14 Section 3. The Business and Tax Regulations Code is hereby amended by adding
15 Article 30, consisting of Sections 3001 through 3014, to read as follows:

16
17 **ARTICLE 30: CANNABIS BUSINESS TAX**

18
19 **SEC. 3001. SHORT TITLE.**

20 This Article 30 shall be known as the "Cannabis Business Tax Ordinance," and the tax it
21 imposes shall be known as the "Cannabis Business Tax."

1 SEC. 3002. DEFINITIONS.

2 Unless otherwise defined in this Article 30, the terms used in this Article shall have the
3 meanings given to them in Articles 6 and 12-A-1 of the Business and Tax Regulations Code, as
4 amended from time to time. For purposes of this Article 30, the following definitions shall apply:

5 "Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or
6 Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified,
7 extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or
8 preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether
9 crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant,
10 fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound,
11 manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted
12 therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For
13 the purpose of this Article 30, "Cannabis" does not mean "Industrial Hemp."

14 "Cannabis Business Activities" means any business activities directly related to Cannabis or
15 Cannabis Products, including but not limited to the cultivation, possession, manufacture, processing,
16 storing, labeling, distribution, or sale of Cannabis or Cannabis Products for consideration. "Cannabis
17 Business Activities" shall not include: (a) business activities indirectly related to Cannabis or
18 Cannabis Products, including the sale of items that do not themselves contain Cannabis or Cannabis
19 Products; (b) laboratory testing; and (c) transportation of Cannabis or Cannabis Products where the
20 person transporting Cannabis or Cannabis Products never takes title to or sells Cannabis or Cannabis
21 Products.

22 "Cannabis Products" means Cannabis that has undergone a process whereby the plant
23 material has been transformed into a concentrate, including, but not limited to, concentrated Cannabis,
24 or an edible or topical product containing Cannabis or concentrated Cannabis and other ingredients.

1 "Industrial Hemp" means a fiber or oilseed crop, or both, that is limited to types of the plant
2 Cannabis sativa L. having no more than three tenths of 1% tetrahydrocannabinol (THC) contained in
3 the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any
4 part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the
5 plant, its seeds or resin produced therefrom.

6 "Medicinal Cannabis" means Cannabis or a Cannabis Product, respectively, sold for use under
7 the Compassionate Use Act of 1996 (Proposition 215) by a medicinal cannabis patient in California
8 who possesses a physician's recommendation.

9 "Retail Sale" means any transaction whereby, for any consideration, title to Cannabis or
10 Cannabis Products is transferred from one person to another for the latter person's use and not for
11 resale, and includes the delivery of Cannabis or Cannabis Products to a person for such person's own
12 use and not for resale pursuant to an order placed for the purchase of the same and soliciting or
13 receiving an order for the same.

14
15 **SEC. 3003. IMPOSITION OF TAX.**

16 (a) Except as otherwise provided in this Article 30, for the privilege of engaging in Cannabis
17 Business Activities in the City, the City imposes an annual Cannabis Business Tax on each person
18 engaged in business in the City that receives gross receipts from Cannabis Business Activities
19 attributable to the City.

20 (b) The Cannabis Business Tax shall be calculated in the following manner:

21 (1) The person or combined group's first \$500,000 of gross receipts attributable to
22 the City from Cannabis Business Activities shall be exempt from the Cannabis Business Tax.

23 (2) The person or combined group's gross receipts attributable to the City from the
24 Retail Sale of Cannabis or Cannabis Products, including the amount exempt under Section 3003(b)(1),
25 shall be multiplied as follows:

1 (A) by 2.5% for gross receipts in excess of the amount exempt under Section
2 3003(b)(1) and up to and including \$1,000,000; and

3 (B) by 5% for gross receipts over \$1,000,000.

4 (3) The person or combined group's gross receipts attributable to the City from all
5 Cannabis Business Activities other than the Retail Sale of Cannabis or Cannabis Products, including
6 the amount exempt under Section 3003(b)(1), shall be multiplied as follows:

7 (A) by 1% for gross receipts in excess of the amount exempt under Section
8 3003(b)(1) and up to and including \$1,000,000; and

9 (B) by 1.5% for gross receipts over \$1,000,000.

10 (4) The Board of Supervisors may from time to time by an ordinance adopted by at
11 least two-thirds of the members of the Board increase one or more of the rates provided for in Sections
12 3003(b)(2) and 3003(b)(3), except that no rate may increase more than 1% annually and no rate may
13 exceed 7%. The Board of Supervisors may from time to time by an ordinance adopted by a majority of
14 the members of the Board decrease one or more of the rates provided for in Sections 3003(b)(2) and
15 3003(b)(3). Any such adjustments in this Section 3003(b)(4) shall be effective no sooner than the tax
16 year following the tax year in which the ordinance adjusting the rate is effective. The Controller shall
17 prepare and submit a market analysis and impact report to the Board before the Board adjusts any tax
18 rate under this Section 3003(b)(4).

19 (5) If a person or combined group has gross receipts attributable to the City from
20 the Retail Sale of Cannabis or Cannabis Products and from Cannabis Business Activities other than the
21 Retail Sale of Cannabis or Cannabis Products, the person or combined group's Cannabis Business Tax
22 shall be determined as follows:

23 (A) The person or combined group's taxable gross receipts shall be determined
24 on an aggregate basis first for gross receipts attributable to the City from Cannabis Business Activities
25

1 other than the Retail Sale of Cannabis or Cannabis Products, and then for gross receipts attributable to
2 the City from the Retail Sale of Cannabis or Cannabis Products;

3 (B) The \$500,000 exemption in Section 3003(b)(1) shall be applied first to
4 gross receipts attributable to the City from Cannabis Business Activities other than the Retail Sale of
5 Cannabis or Cannabis Products, with any remaining portion of the exemption then applied to gross
6 receipts attributable to the City from the Retail Sale of Cannabis or Cannabis Products;

7 (C) The rates applicable under Section 3003(b)(2) shall be determined by
8 applying the rate scale commencing with the gross receipts attributable to the City from Cannabis
9 Business Activities other than the Retail Sale of Cannabis or Cannabis Products; and

10 (D) The Cannabis Business Tax for the person or combined group shall be the
11 sum of the liabilities calculated under Sections 3003(b)(2) and 3002(b)(3), determined in accordance
12 with Sections 3003(b)(5)(A), 3003(b)(5)(B), and 3003(b)(5)(C).

13
14 **SEC. 3004. ALLOCATION; GROSS RECEIPTS ATTRIBUTABLE TO THE CITY.**

15 (a) Notwithstanding any other provision of this Article 30, any person subject to the Cannabis
16 Business Tax engaging in Cannabis Business Activities in the City and engaging in no Cannabis
17 Business Activities outside the City is subject to the Cannabis Business Tax on all non-exempt gross
18 receipts.

19 (b) Notwithstanding any other provision of this Article 30, any person subject to the Cannabis
20 Business Tax engaging in Cannabis Business Activities both in the City and outside the City shall
21 determine their or their combined group's gross receipts attributable to the City from Cannabis
22 Business Activities under Section 956.1 of Article 12-A-1. For purposes of this Section 3004(b), "gross
23 receipts" as used in Section 956.1 of Article 12-A-1 shall mean all of the person or combined group's
24 non-exempt gross receipts from Cannabis Business Activities.

1 **SEC. 3005. EXEMPTIONS AND EXCLUSIONS.**

2 (a) For purposes of this Article 30, gross receipts shall not include receipts from the Retail Sale
3 of Medicinal Cannabis.

4 (b) An organization that is exempt from income taxation by Chapter 4 (commencing with
5 Section 23701) of Part 11 of Division 2 of the California Revenue and Taxation Code or Subchapter F
6 (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as
7 amended, as qualified by Sections 502, 503, 504, and 508 of the Internal Revenue Code of 1986, as
8 amended, shall be exempt from taxation under this Article 30, only so long as those exemptions
9 continue to exist under state or federal law.

10 (c) For purposes of this Article 30, gross receipts shall not include receipts from business
11 activities if, and only so long as and to the extent that, the City is prohibited from taxing such receipts
12 under the Constitution or laws of the United States or under the Constitution or laws of the State of
13 California.

14 (d) For only so long as and to the extent that the City is prohibited from imposing the Cannabis
15 Business Tax, any person upon whom the City is prohibited under the Constitution or laws of the State
16 of California or the Constitution or laws of the United States from imposing the Cannabis Business Tax
17 shall be exempt from the Cannabis Business Tax.

18
19 **SEC. 3006. RETURNS; COMBINED RETURNS.**

20 (a) Persons subject to the Cannabis Business Tax shall file returns at the same time and in the
21 same manner as returns filed for the gross receipts tax (Article 12-A-1), including the rules for
22 combined returns under Section 956.3, as amended from time to time.

23 (b) If a person is subject to the Cannabis Business Tax but is not required to file a gross
24 receipts tax return, such person or combined group's Cannabis Business Tax return shall be filed at the
25

1 same time and in the same manner as if such person or combined group were required to file a gross
2 receipts tax return.

3 (c) For purposes of this Article 30, a lessor of residential real estate is treated as a separate
4 person with respect to each individual building in which it leases residential real estate units,
5 notwithstanding Section 6.2-15 of Article 6, as amended from time to time, or subsection (a) of this
6 Section 3006. This subsection (c) applies only to leasing residential real estate units within a building,
7 and not to any business activity related to other space, either within the same building or other
8 buildings, which is not residential real estate. The Tax Collector is authorized to determine what
9 constitutes a separate building and the number of units in a building.

10
11 **SEC. 3007. TAX COLLECTOR AUTHORIZED TO DETERMINE GROSS RECEIPTS.**

12 The Tax Collector may, in the Tax Collector's reasonable discretion, independently establish a
13 person or combined group's gross receipts attributable to the City from Cannabis Business Activities
14 and establish or reallocate gross receipts among related entities so as to fairly reflect the gross receipts
15 attributable to the City from Cannabis Business Activities of all persons and combined groups.

16
17 **SEC. 3008. CONSTRUCTION AND SCOPE OF THE CANNABIS BUSINESS TAX**
18 **ORDINANCE.**

19 (a) This Article 30 is intended to authorize application of the Cannabis Business Tax in the
20 broadest manner consistent with its provisions and with the California Constitution, the United States
21 Constitution, and any other applicable provision of federal or state law.

22 (b) The Cannabis Business Tax imposed by this Article 30 is in addition to all other City taxes,
23 including the gross receipts tax imposed by Article 12-A-1, as amended from time to time. Accordingly,
24 by way of example and not limitation, persons subject to both the Cannabis Business Tax and the gross
25

1 receipts tax shall pay both taxes. Persons exempt from either the gross receipts tax or the Cannabis
2 Business Tax, but not both, shall pay the tax from which they are not exempt.

3
4 **SEC. 3009. ADMINISTRATION OF THE CANNABIS BUSINESS TAX ORDINANCE.**

5 Except as otherwise provided under this Article 30, the Cannabis Business Tax Ordinance shall
6 be administered pursuant to Article 6 of the Business and Tax Regulations Code, as amended from time
7 to time.

8
9 **SEC. 3010. EXPENDITURE OF PROCEEDS.**

10 Proceeds from the Cannabis Business Tax shall be deposited in the City's General Fund and
11 may be spent for unrestricted general revenue purposes of the City.

12
13 **SEC. 3011. AMENDMENT OF ORDINANCE.**

14 Except as limited in Section 3003(b)(4) and as limited by Article XIII C of the California
15 Constitution, the Board of Supervisors may amend or repeal this Article 30 by ordinance without a vote
16 of the people.

17
18 **SEC. 3012. EFFECT OF STATE AND FEDERAL AUTHORIZATION.**

19 To the extent that the City's authorization to impose or collect any tax imposed under this
20 Article 30 is expanded or limited as a result of changes in state or federal statutes, regulations, or other
21 laws, or judicial interpretations of those laws, no amendment or modification of this Article shall be
22 required to conform the taxes to those changes, and the taxes are hereby imposed in conformity with
23 those changes and the Tax Collector shall collect them to the full extent of the City's authorization up
24 to the full amount and rate of the taxes imposed under this Article.

1 **SEC. 3013. SEVERABILITY.**

2 (a) Except as provided in Section 3013(b), if any section, subsection, sentence, clause, phrase,
3 or word of this Article 30, or the application thereof to any person or circumstance, is for any reason
4 held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision
5 shall not affect the validity of the remaining portions of this Article, including the application of such
6 portions to other persons or circumstances. The People of the City and County of San Francisco
7 hereby declare that, except as provided in Section 3013(b), they would have adopted each section,
8 subsection, sentence, clause, phrase, and word of this Article not declared invalid or unconstitutional
9 without regard to whether any other portion of this Article would be subsequently declared invalid or
10 unconstitutional.

11 (b) If the imposition of the Cannabis Business Tax in Section 3003 is held in its entirety to be
12 facially invalid or unconstitutional in a final court determination, the remainder of this Article 30 shall
13 be void and of no force and effect, and the City Attorney shall cause it to be removed from the Business
14 and Tax Regulations Code.

15
16 **SEC. 3014. SAVINGS CLAUSE.**

17 No section, clause, part, or provision of this Article 30 shall be construed as requiring the
18 payment of any tax that would be in violation of the Constitution or laws of the United States or of the
19 Constitution or laws of the State of California.

20
21 Section 4. In the event that an ordinance is enacted prior to November 6, 2018,
22 amending Section 6.2-12 of Article 6 of the Business and Tax Regulations Code to expand its
23 application to taxes imposed by Article 21 (Early Care and Education Commercial Rents Tax
24 Ordinance) of the Business and Tax Regulations Code, such amendments to Section 6.2-12
25

1 of Article 6 shall be null and void in their entirety, and the amendments made to Section 6.2-
2 12 of Article 6 in Section 2 of this ordinance shall take effect in their entirety.

3
4 Section 5. Appropriations Limit Increase. Pursuant to California Constitution
5 Article XIII B and applicable laws, for four years from November 6, 2018, the appropriations
6 limit for the City shall be increased by the increase in the sum of the amounts collected by the
7 levy of the taxes imposed under Articles 10, 10B, 12, 12-A, and 12-A-1 of the Business and
8 Tax Regulations Code in the current fiscal year compared with the prior fiscal year, and by the
9 aggregate sum collected by the levy of the tax imposed under Section 3 of this ordinance.

10
11 Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word
12 of this ordinance, or any application thereof to any person or circumstance, is held to be
13 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
14 shall not affect the validity of the remaining portions or applications of the ordinance. The
15 People of the City and County of San Francisco hereby declare that they would have passed
16 this ordinance and each and every section, subsection, sentence, clause, phrase, and word
17 not declared invalid or unconstitutional without regard to whether any other portion of this
18 ordinance or application thereof would be subsequently declared invalid or unconstitutional.

19
20 Section 7. No Conflict with Federal or State Law. Nothing in this ordinance shall be
21 interpreted or applied so as to create any requirement, power, or duty in conflict with any
22 federal or state law.

23
24 Section 8. Scope of Ordinance. In enacting this ordinance, the People of the City and
25 County of San Francisco intend to amend only those words, phrases, paragraphs,

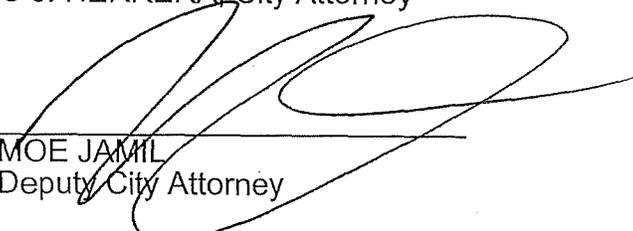
1 subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other
2 constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions
3 or deletions, in accordance with the "Note" that appears under the official title of the
4 ordinance.

5
6 Section 9. Effective and Operative Dates. The effective date of this ordinance shall be
7 10 days after the date the official vote count is declared by the Board of Supervisors. This
8 ordinance shall become operative on January 1, 2019, except for Section 3 of this ordinance,
9 which shall become operative on January 1, 2021.

10
11 APPROVED AS TO FORM:

12 DENNIS J. HERRERA, City Attorney

13
14 By:


15 MOE JAMIL
Deputy City Attorney

16 n:\leganas2018\1800271\01290887.docx

LEGISLATIVE DIGEST

(Amended in Committee – Second Draft – 7/19/18)

[Initiative Ordinance - Business and Tax Regulations Code - Additional Gross Receipts Tax on Cannabis; Additional Conditions Subjecting Persons to Business Taxes]

Motion ordering submitted to the voters, at an election to be held on November 6, 2018, an ordinance amending the Business and Tax Regulations Code to impose an additional gross receipts tax, starting January 1, 2021, on gross receipts from cannabis business activities, but exempting the first \$500,000 of gross receipts and exempting retail sales of medicinal cannabis; said tax to be between 1% and 5% depending on the type of cannabis business activity and amount of gross receipts, but may be adjusted at any time within a range of 0% to 7% by an ordinance adopted by a two-thirds vote of the Board of Supervisors for any increase (which is limited to 1% annually) or an ordinance adopted by a majority vote of the Board of Supervisors for any decrease; and, starting January 1, 2019, to expand the conditions that subject a person to certain business taxes by including persons with more than \$500,000 in annual gross receipts in the City; and increasing the City's appropriations limit by the increase in the amount of those business taxes collected compared to the prior year and by the amount collected under the new Cannabis Business Tax, for four years from November 6, 2018.

Existing Law

Businesses engaged in cannabis business activities currently pay a gross receipts tax under Article 12-A-1 of the Business and Tax Regulations Code. The rates vary based on the type of cannabis business activity and the amount of each business's gross receipts, and range from 0.075% to 0.65%. Businesses with \$1,000,000 or less in total gross receipts within the City (whether from cannabis business activities or any other line of business), adjusted for inflation, are generally exempt from the gross receipts tax in Article 12-A-1. Certain other businesses (e.g., certain non-profits, banks, insurance companies, etc.) are also exempt.

Persons are subject to certain business taxes, including but not limited to business registration, payroll expense, and gross receipts taxes, if they are engaging in business within the City. Persons are considered to be engaging in business in the City if they meet at least one of ten conditions, including maintaining a fixed place of business within the City or soliciting business or providing services in the City for all or part of any seven days during the tax year.

Amendments to Current Law

Beginning on January 1, 2021, this ordinance would impose an additional gross receipts tax on businesses engaging in cannabis business activities in the City (the "Cannabis Business Tax"). Cannabis business activities means any business activities directly related to cannabis or cannabis products, including but not limited to cultivation, possession, manufacture,

processing, storing, labeling, distribution, or sale of cannabis or cannabis products for consideration. Cannabis business activities does not include: (1) business activities indirectly related to cannabis or cannabis products, such as the sale of items that do not themselves contain cannabis; (2) laboratory testing of cannabis; and (3) transportation of cannabis or cannabis products where the person transporting cannabis or cannabis products never takes title to or sells cannabis or cannabis products. Businesses liable for the Cannabis Business Tax would also remain liable for the existing gross receipts tax.

The Cannabis Business Tax rate would be:

- 2.5% for gross receipts from the retail sale of cannabis or cannabis products up to and including \$1,000,000, and 5% for gross receipts from the retail sale of cannabis or cannabis products above \$1,000,000; and
- 1% for gross receipts from cannabis business activities other than the retail sale of cannabis or cannabis products up to and including \$1,000,000, and 1.5% for gross receipts from cannabis business activities other than the retail sale of cannabis or cannabis products above \$1,000,000.

The ordinance would provide rules for how businesses with gross receipts both from the retail sale of cannabis or cannabis products and from cannabis business activities other than the retail sale of cannabis and cannabis products should calculate their Cannabis Business Tax.

The ordinance would permit the Board of Supervisors, by a vote of at least eight members, to increase any or all of the above tax rates, except that each rate could not exceed 7%. The ordinance would also permit the Board of Supervisors, by a majority vote, to decrease any or all of the above tax rates. Any increase in tax would be limited to 1% annually.

The first \$500,000 of gross receipts from cannabis business activities would be exempt from the Cannabis Business Tax. Businesses with gross receipts both from the retail sale of cannabis or cannabis products and from cannabis business activities other than the retail sale of cannabis and cannabis products would be entitled to only one \$500,000 exemption. Additionally, amounts received from the retail sale of medicinal cannabis would be excluded from the calculation of the Cannabis Business Tax. Certain businesses exempt from the existing gross receipts tax (e.g., certain non-profits, banks, insurance companies, etc.) would also be exempt from the Cannabis Business Tax.

All proceeds from the Cannabis Business Tax would be deposited into the general fund and could be expended for any purposes of the City.

On June 21, 2018, the United States Supreme Court in *South Dakota v. Wayfair, Inc.* held that a person no longer needs to have physical presence in a taxing jurisdiction to be subject to that jurisdiction's tax. Effective January 1, 2019, this ordinance would expand the conditions

under which persons are subject to certain business taxes in the City, by also including persons with annual gross receipts in the City exceeding \$500,000, irrespective of physical presence.

This ordinance would also increase the City's appropriations limit under Article XIII B by the increase in the amount of those business taxes collected each fiscal year compared to the prior fiscal year, and by the amounts collected from the Cannabis Business Tax, for four years from November 6, 2018.

Background

This digest reflects amendments made at the Budget and Finance Committee on July 12, 2018. The amendments:

- Removed transportation from the definition of Cannabis Business Activities if the person transporting cannabis or cannabis products never takes title to or sells cannabis or cannabis products;
- For the tax year 2020, reduced the Cannabis Business Tax rate from 2% to 1%;
- For subsequent years, reduced the Cannabis Business Tax Rate from 2% to 1% for gross receipts from cannabis business activities other than the retail sale of cannabis or cannabis products up to and including \$1,000,000, and from 3% to 1.5% for gross receipts from cannabis business activities other than the retail sale of cannabis or cannabis products above \$1,000,000;
- Reduced the voting threshold required to decrease the tax from eight members of the Board of Supervisors to a majority of the members of the Board of Supervisors;
- Reduced the maximum rate up to which the Board of Supervisors could increase the tax from 10% to 7%; and
- Limited any increases to the tax rate to 1% annually.

This digest also reflects amendments made at the Budget and Finance Committee on July 19, 2018. The amendments:

- Effective January 1, 2019, expanded the conditions that will subject persons to certain business taxes by including persons with more than \$500,000 in annual gross receipts in the City; and
- Changed the operative date of the Cannabis Business Tax to January 1, 2021, instead of January 1, 2020.

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OFFICE OF THE CONTROLLER
CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield
Controller

Todd Rydstrom
Deputy Controller

Ms. Angela Calvillo
Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place Room 244
San Francisco, CA 94102-4689

July 25, 2018

RE: File 180765 - Ordinance amending the Business Tax & Regulations Code – Additional gross receipts tax on cannabis; additional conditions subjecting persons to business taxes

Dear Ms. Calvillo,

Should this ordinance be approved, in my opinion, it would result in a tax revenue increase to the City of an estimated \$2-4 million in 2019, growing to \$7-16 million annually beginning in 2021. The tax is a general tax and proceeds would be deposited into the General Fund.

The measure would amend the City's Business Tax and Regulations Code to impose a cannabis business tax rate of between one percent and five percent depending on the type of cannabis business activity and amount of a business's gross receipts, beginning on January 1, 2021. In addition, the measure would exempt the first \$500,000 of gross receipts and exempt retail sales of medicinal cannabis. The tax rate may be adjusted between zero percent and seven percent at any time by a two-thirds vote of the Board of Supervisors, but the rate cannot be increased by more than 1 percent annually. This portion of the ordinance is estimated to generate \$5-12 million annually beginning in 2021.

Additionally, the ordinance would permit the City to tax businesses that do not have a physical presence here, provided those businesses' sales exceed \$500,000 annually. The revenue implications of this provision depend on the extent to which local wholesalers, retailers, and consumers directly receive shipments from these non-local businesses, as opposed to shipping through other distributors already subject to business tax. Currently, this is largely unknown to the City. We estimate shorter-term revenues of \$2 to 4 million annually as a result of this change, with the potential for significant additional tax revenue depending on the total sales from new required business tax payers. For each additional \$1 billion from such sales, City revenues would increase by approximately \$1.5 million.

Sincerely,

for 
Ben Rosenfield
Controller

Note: This analysis reflects our understanding of the proposal as of the date shown. At times further information is provided to us which may result in revisions being made to this analysis before the final Controller's statement appears in the Voter Information

Wong, Linda (BOS)

From: Board of Supervisors, (BOS)
Sent: Friday, July 06, 2018 12:34 PM
To: Somera, Alisa (BOS); Wong, Linda (BOS)
Subject: FW: Local Cannabis Taxation in San Francisco
Attachments: CTF letter to BoS --Taxation -- 7.2.18.pdf

For File No. 180629.

From: Calvillo, Angela (BOS)
Sent: Tuesday, July 03, 2018 11:50 AM
To: Mchugh, Eileen (BOS) <eileen.e.mchugh@sfgov.org>
Subject: FW: Local Cannabis Taxation in San Francisco

From: Tim Morrison [<mailto:tmorrison@harderco.com>]
Sent: Monday, July 02, 2018 5:00 PM
To: BOS-Supervisors <bos-supervisors@sfgov.org>; BOS-Legislative Aides <bos-legislative_aides@sfgov.org>; BOS-Everyone <bos-everyone@sfgov.org>
Cc: DPH - terrance <terrance@sequelmedia.com>; DPH - jen.garcia7 <jen.garcia7@yahoo.com>; DPH - sara2 <sara@sarapayan.com>; Elliott, Nicole (ADM) <nicole.elliott@sfgov.org>; DPH - mimagee <mmagee@harderco.com>
Subject: Local Cannabis Taxation in San Francisco

Dear Mayor-Elect Breed and Honorable Members of the San Francisco Board of Supervisors:

On behalf of the San Francisco Cannabis State Legalization Task Force, please find a letter attached outlining the Task Force's six recommendations regarding local cannabis taxation.

Should your offices have any questions about this letter, please do not hesitate to reach out to any of the Chair, Co-Chairs or Nicole Elliott at Nicole.Elliott@sfgov.org or 415-554-4684.

Sincerely,
Tim Morrison
Task Force co-facilitator

CC: Terrance Alan, Task Force Chair, Seat 19
Jennifer Garcia, Task Force Co-Chair, Seat 20
Sara Payan, Task Force Co-Chair, Seat 12
Nicole Elliott, Director, Office of Cannabis
Michelle Magee, Harder+Company Community Research, Task Force Facilitator

Tim Morrison, MPP | Research Associate
Harder+Company Community Research
299 Kansas Street, San Francisco, CA 94103
(415) 522-5400 | www.harderco.com | [@HarderCo](https://twitter.com/HarderCo)

San Francisco Cannabis State Legalization Task Force

Terrance Alan, Chair | Seat 19: Individual working in entertainment or nightlife industry

Jennifer Garcia, Co-Chair | Seat 20: Labor union representative for cannabis industry

Sara Payan, Co-Chair | Seat 12: Individual who uses cannabis, with at least 2 years' cannabis legislative advocacy experience

July 2, 2018

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Re: Local Cannabis Taxation in San Francisco

Dear Mayor-Elect Breed and Supervisors:

Between April and June 2018, the Cannabis Task Force discussed local cannabis taxation through the lens of our guiding principles to: (1) promote health and safety and design policy options that reduce youth exposure and access to cannabis; (2) rely upon sound, evidence-based or experiential information and data, and (3) design policy options that seek to reduce the illicit market. As a result of our deliberations and our guiding principles, we offer the following recommendations:

- 1. Tax rate:** If San Francisco decides to implement local adult use cannabis taxes, the City should consider a 0 to 3% tax at the point of sale. The State has imposed a 15% excise tax on adult use cannabis. Therefore, the local point of sale tax should not exceed 3%, to prevent consumers from purchasing from the illicit market due to taxes that are perceived to be too high.
- 2. Collection mechanism:** Given that the cannabis industry currently operates primarily on a cash-only basis, San Francisco's Office of the Treasurer and Tax Collector should create a mechanism to collect local cannabis taxes locally.
- 3. Compassion incentives:** San Francisco should provide incentives (e.g. tax and licensing incentives) to cannabis organizations that provide compassion programs.
- 4. Employment incentives:** Provide employer financial incentives for hiring populations impacted by the war on drugs (e.g., fee discounts and tax breaks, such as Enterprise zone tax credit, payroll/gross receipt tax)
- 5. Data collection:** San Francisco should use an evidence-based approach to inform future adult use cannabis tax policies and legislation. The City should engage key stakeholders to identify and collect appropriate data points to assess the impact of cannabis legalization.
- 6. Revenue allocation:** San Francisco should consider allocating its local adult use cannabis tax revenue towards the City's local regulatory, policy, and programmatic goals with respect to cannabis legalization. Allocation of funds shall be directed towards community identified priorities including, but not limited to:
 - Workforce development
 - Entrepreneurial opportunity fund and reinvestment fund
 - Education, counseling and treatment services for students and youth directed towards substance use/abuse programs that emerge from cannabis legalization
 - General education and city college education
 - Education and training for formerly incarcerated persons

Thank you for your consideration, and please feel free to contact us with any concerns, comments or questions. We look forward to working closely with you to establish an environment where consumers, patients, and workers can thrive in San Francisco's regulated cannabis industry.

Sincerely,

Terrance Alan, Seat #19 & Chair - terrance@sequelmedia.com

Sara Payan, Seat #12 & Co-chair - sara@sarapayan.com

Jennifer Garcia, Seat #20 & Co-chair - jen.garcia7@yahoo.com

San Francisco Cannabis State Legalization Task Force

CC: Nicole Elliott, Director, Office of Cannabis, nicole.elliott@sfgov.org

To: SF Board of Supervisors, Budget and Finance Subcommittee
From: Ryan "Indigo" Warman, Cannabis Industry Professional
Re: Amendments to proposed Local Gross Receipts Tax

File # 180629, 1807
Received in
Committee
7/26/18
J

Good morning Supervisors,

I want to thank you for your time and consideration on this issue. I also think that, by and large, you've shown excellent leadership for the cannabis industry, and I just want to acknowledge that, and everyone involved.

To offer some context, in October 2016 Oregon's Phase 2 testing regulations took effect, similar to the new regulations here on July 1st. The resulting testing bottleneck and supply chain backlog was so severe that it brought Oregon's cannabis industry to its knees, and resulted in the layoff of 70% of its workforce. Things are not quite that bad here yet, but the similarities are alarming. I should add that the situation in Oregon was largely due to poorly written state regulations which required testing accuracies of the labs that most of them weren't even certified to meet yet. Unfortunately, this particular factor is nearly identical to the current situation in California under the somewhat hastily written emergency regulations. While many of these issues have been corrected in the proposed permanent regulations, the earliest that we will probably see those adopted is the beginning of next year.

Given that most of this is outside of your control we hope that you'll take action where you are able to reduce the impact of these new regulations on local San Francisco businesses by mitigating the proposed gross receipts tax. The current proposed taxes are 5x-50x higher than those levied against other businesses, and we believe this is excessive. We've also seen that higher taxes force patients and consumers into the unregulated black market, which may raise public safety concerns with untested products, and certainly reduces your overall tax revenue.

I'll close by echoing the recommendations of my colleagues, and will include a graph and copy of an article about Oregon for your reference.

We are requesting:

- That the cap which is now at 7% be reduced to 4%.
- That the City of SF pushes for lower state taxes on cannabis, both excise and cultivation taxes.
- That the City does something definitive about stemming unregulated commercial cannabis operations in SF, which should include lowering barriers to entry and increased enforcement on bad actors.

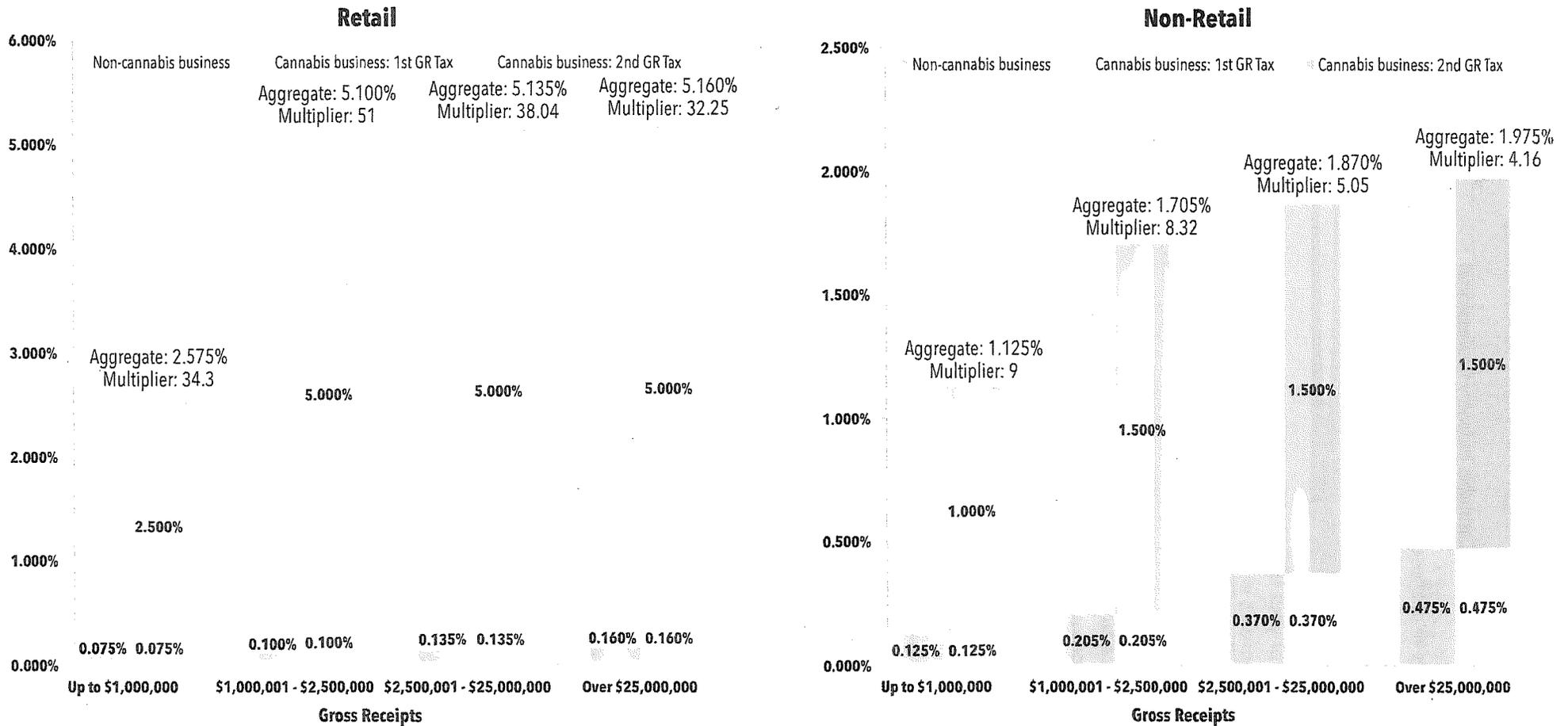
We also propose that the local Gross Receipts Tax table be amended as follows, suspending the taxes until 2021 and providing a more graduated rollout. I would remind the board that cannabis businesses are still unable to take normal tax deductions like other businesses, so a few percentage points can mean the difference between success and failure.

	Retail \$500k+	Retail \$1 mil +	Non-retail \$500K+	Non-retail \$1 mil+
2019	no tax			
2020	no tax			
2021	0.5%	1%	0.5%	.75%
2022	1%	2%	.75%	1.0%
2023	1.5%	3%	1.0%	1.5%

Thank you again for your time.

BOS File No. 180629 - Proposed Gross Receipts Tax Rates for Licensed Cannabis Businesses: Comparison of tax rates imposed upon cannabis vs. other businesses, by gross receipts bracket

Non-Cannabis Business Local Tax Obligation: 1) General GR Tax
 Licensed Cannabis Business Local Tax Obligation: 1) General GR Tax; 2) Additional Industry-Specific Tax



Notes:
 The graphs above reflects local gross receipts tax rates only. Excise, cultivation, income, and sales taxes are excluded. Tax exemptions are not taken into account. The tax rates do not apply to unlicensed cannabis businesses.
 Prepared by Menaka Mahajan (email: menaka@taxandinsurancematters.com).

Daily Astorian - January 8, 2017

Oregon dispensary sales shrink as fewer products reach shelves - Coast River Business Journal

dailyastorian.com/CRBJ/20170108/oregon-dispensary-sales-shrink-as-fewer-products-reach-shelves

By Luke Whittaker, lwhittaker@crbizjournal.com

ASTORIA — Oregon marijuana dispensaries have been reeling since October, when increased testing standards became required at certified labs. The result has been an immense backlog of extracts and edibles being delayed in distribution and dispensaries around Clatsop County have been directly impacted by the bottleneck.

“The last two months were a nightmare,” Omar Guerrero, co-owner of The Farmacy said. “We didn’t have edibles or extract because of the new lab test requirements. It delayed everything. We suffered. We had all the products then we had nothing for a little more than a month.”

Too little testing capacity

Beginning Oct. 1, all cannabis being sold to dispensaries and entering the market had to meet new testing standards by labs that were properly certified to do the testing. However, only a handful of labs are yet certified to do pesticide testing, resulting in delays. The Farmacy relies largely on Portland-based CURA Cannabis Solutions for oils, concentrates and edibles. However many of the products they used to carry simply haven’t been available because of a backlog in testing requirements and a lack of certified labs.

Since the start of the new regulation, Guerrero estimates that sales of edibles and extracts has fallen 40 percent, but he remains optimistic that the sales and customers will return once the product does.

“Those customers will come back when they find out the product is back on the shelf,” Guerrero said.

Currently, there is only one offering on the shelf, a \$20 single-serving when typically there are dozens of options ranging from \$5 lollipops to \$20 artisan chocolate.

Supply chain slows to a trickle

In response to the delays and lack of product reaching dispensaries, the Oregon Health Authority (OHA) adopted temporary testing rules effective Dec. 2 through May 30, 2017 which has allowed a trickle of product to reach shelves, but the damage has already been done to two dispensaries in Astoria who have seen sales of extract and edibles collapse over the past eight weeks in wake of the new testing standards.

“We got our first batch of edibles yesterday (Wednesday, Dec. 14),” Guerrero said adding that he’s hopeful more product could arrive any day. It had been since November that he’s last had a full supply of edibles and extracts. The scene was similar at another dispensary down the street.

"The bud is the backbone of the business, but a quarter of the business has been drastically impacted," Oscar Nelson, co-owner of the Sweet Relief Dispensary in downtown Astoria said. Nelson estimated that sales in edibles and concentrates had shrunk 50 percent since the new testing regulations took effect in October.

"Getting tested product has been crazy. OHA has a huge backlog and very few producers and extractors," Nelson said.

"You've got less producers, fewer people bringing product to the market and that same product is going through a much more stringent funnel. It's like we've got several bottlenecks back-to-back." Since the change in regulation, Nelson estimates that he's lost 33 percent of the edibles and concentrates he used to carry, and customers came to expect.

"The inconsistency of the business through the market fluctuations has caused customer volatility," Nelson said. "We've had customer falloff."

The regulation has been a roller-coaster of highs and lows, according to Nelson.

"This is the third iteration of the market emerging and then subsiding," Nelson said. "People have seen their dream come and fade. People are getting frustrated because brands are coming and going, known products are coming and going. It's like there's no consistency. The state is doing the best they can, but it's a screwed up situation."

WA gains an advantage

The new testing regulations puts Oregon dispensaries at a disadvantage to their counterparts just across the bridge in Washington, Nelson said.

"I think we're disadvantaged through the testing," he said. Nelson ultimately believes that industry regulation and consumer confidence will eventually stabilize, but patience is paramount.

"Customers need to realize this had been a bunch of experiments on the state level, none of this had been set in stone," Nelson said, "After Jan. 1 is really when the game starts and the market won't stabilize until St. Patty's Day 2018. Give it another year and a couple months. The landscape, consumer base and amount of available products are going to stabilize." Once the market and regulation settle, Nelson believes there will be more marijuana edible and concentrate products than ever before, but it will just take time to get through the backlog of new applicants.

"There's like 800 new producers with applications in," Nelson said.

"These shops are going to be like mini markets of variety with thousands of different options of edibles, topicals and concentrates. There's so much innovation going on with this market, it really hasn't even started yet." Among the emerging innovations mentioned by Nelson was a cannabis-infused tampon that can reportedly help reduce cramps for women within 20 minutes. However, only time will tell what, and when, the new products will arrive on dispensary shelves.