


BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM:  Linda Wong, Assistant Clerk
Budget and Finance Sub-Committee

DATE: July 18, 2018

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Sub-Committee

The Board of Supervisors' Budget and Finance Sub-Committee has received the following amended legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 180629-2

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, 2020, 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 for 2020 to be set at a rate of 1%, which will increase in 2021 to between 1% and 5% depending on the type of cannabis business activity and amount of gross receipts, and which 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 increasing the City's appropriations limit by the amount collected under the new tax for four years from November 6, 2018.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

1 [Initiative Ordinance - Business and Tax Regulations Code - Additional Gross Receipts Tax on
2 Cannabis]

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, 2020, 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 for 2020 to be set at a rate of 1%, which will**
8 **increase in 2021 to between 1% and 5% depending on the type of cannabis business**
9 **activity and amount of gross receipts, and which may be adjusted at any time within a**
10 **range of 0% to 7% by an ordinance adopted by a two-thirds vote of the Board of**
11 **Supervisors for any increase (which is limited to 1% annually) or an ordinance adopted**
12 **by a majority vote of the Board of Supervisors for any decrease; and increasing the**
13 **City's appropriations limit by the amount collected under the new tax for four years**
14 **from November 6, 2018.**

15
16 **MOVED,** That the Board of Supervisors hereby submits the following ordinance to the
17 voters of the City and County of San Francisco, at an election to be held on November 6,
18 2018.

19
20 **Ordinance amending the Business and Tax Regulations Code to impose an additional**
21 **gross receipts tax, starting January 1, 2020, on gross receipts from cannabis business**
22 **activities, but exempting the first \$500,000 of gross receipts and exempting retail sales**
23 **of medicinal cannabis; said tax for 2020 to be set at a rate of 1%, which will increase in**
24 **2021 to between 1% and 5% depending on the type of cannabis business activity and**
25 **amount of gross receipts, and which may be adjusted at any time within a range of 0%**

1 to 7% by an ordinance adopted by a two-thirds vote of the Board of Supervisors for any
2 increase (which is limited to 1% annually) or an ordinance adopted by a majority vote
3 of the Board of Supervisors for any decrease; and increasing the City's appropriations
4 limit by the amount collected under the new tax for four years from November 6, 2018.

5
6 NOTE: **Unchanged Code text and uncodified text** are in plain font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
9 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
10 parts of tables.

11
12 Be it ordained by the People of the City and County of San Francisco:

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

16 Section 2. The Business and Tax Regulations Code is hereby amended by adding
17 Article 30, consisting of Sections 3001 through 3014, to read as follows:

18
19 **ARTICLE 30: CANNABIS BUSINESS TAX**

20
21 **SEC. 3001. SHORT TITLE.**

22 *This Article 30 shall be known as the "Cannabis Business Tax Ordinance," and the tax it*
23 *imposes shall be known as the "Cannabis Business Tax."*
24
25

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) Notwithstanding the tax rates provided in Sections 3003(b)(2) and 3003(b)(3),
11 for tax year 2020 each of the tax rates under Sections 3003(b)(2)(A), 3003(b)(2)(B), 3003(b)(3)(A), and
12 3003(b)(3)(B) shall be 1%.

13 (5) The Board of Supervisors may from time to time by an ordinance adopted by at
14 least two-thirds of the members of the Board increase one or more of the rates provided for in Sections
15 3003(b)(2) and 3003(b)(3), or the rate provided for in Section 3003(b)(4), except that no rate shall
16 increase more than 1% annually and no rate shall exceed 7%. The Board of Supervisors may from
17 time to time by an ordinance adopted by a majority of the members of the Board decrease one or more
18 of the rates provided for in Sections 3003(b)(2) and 3003(b)(3), or the rate provided for in Section
19 3003(b)(4). Any such adjustments in this Section 3003(b)(5) shall be effective no sooner than the tax
20 year following the tax year in which the ordinance adjusting the rate is effective. The Controller shall
21 prepare and submit a market analysis and impact report to the Board before the Board adjusts any tax
22 rate under this Section 3003(b)(5).

23 (6) If a person or combined group has gross receipts attributable to the City from
24 the Retail Sale of Cannabis or Cannabis Products and from Cannabis Business Activities other than the
25

1 Retail Sale of Cannabis or Cannabis Products, the person or combined group's Cannabis Business Tax
2 shall be determined as follows:

3 (A) The person or combined group's taxable gross receipts shall be determined
4 on an aggregate basis first for gross receipts attributable to the City from Cannabis Business Activities
5 other than the Retail Sale of Cannabis or Cannabis Products, and then for gross receipts attributable to
6 the City from the Retail Sale of Cannabis or Cannabis Products;

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

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

14 (D) The Cannabis Business Tax for the person or combined group shall be the
15 sum of the liabilities calculated under Sections 3003(b)(2) and 3002(b)(3), determined in accordance
16 with Sections 3003(b)(6)(A), 3003(b)(6)(B), and 3003(b)(6)(C).

17
18 **SEC. 3004. ALLOCATION; GROSS RECEIPTS ATTRIBUTABLE TO THE CITY.**

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

23 (b) Notwithstanding any other provision of this Article 30, any person subject to the Cannabis
24 Business Tax engaging in Cannabis Business Activities both in the City and outside the City shall
25 determine their or their combined group's gross receipts attributable to the City from Cannabis

1 Business Activities under Section 956.1 of Article 12-A-1. For purposes of this Section 3004(b), “gross
2 receipts” as used in Section 956.1 of Article 12-A-1 shall mean all of the person or combined group’s
3 non-exempt gross receipts from Cannabis Business Activities.

4
5 **SEC. 3005. EXEMPTIONS AND EXCLUSIONS.**

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

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

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

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

1 **SEC. 3006. RETURNS; COMBINED RETURNS.**

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

5 (b) If a person is subject to the Cannabis Business Tax but is not required to file a gross
6 receipts tax return, such person or combined group's Cannabis Business Tax return shall be filed at the
7 same time and in the same manner as if such person or combined group were required to file a gross
8 receipts tax return.

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

16
17 **SEC. 3007. TAX COLLECTOR AUTHORIZED TO DETERMINE GROSS RECEIPTS.**

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

1 **SEC. 3008. CONSTRUCTION AND SCOPE OF THE CANNABIS BUSINESS TAX**

2 **ORDINANCE.**

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

6 (b) The Cannabis Business Tax imposed by this Article 30 is in addition to all other City taxes,
7 including the gross receipts tax imposed by Article 12-A-1, as amended from time to time. Accordingly,
8 by way of example and not limitation, persons subject to both the Cannabis Business Tax and the gross
9 receipts tax shall pay both taxes. Persons exempt from either the gross receipts tax or the Cannabis
10 Business Tax, but not both, shall pay the tax from which they are not exempt.

11
12 **SEC. 3009. ADMINISTRATION OF THE CANNABIS BUSINESS TAX ORDINANCE.**

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

16
17 **SEC. 3010. EXPENDITURE OF PROCEEDS.**

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

20
21 **SEC. 3011. AMENDMENT OF ORDINANCE.**

22 Except as limited in Section 3003(b)(5) and as limited by Article XIII C of the California
23 Constitution, the Board of Supervisors may amend or repeal this Article 30 by ordinance without a vote
24 of the people.

1 **SEC. 3012. EFFECT OF STATE AND FEDERAL AUTHORIZATION.**

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

8
9 **SEC. 3013. SEVERABILITY.**

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

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

1 **SEC. 3014. SAVINGS CLAUSE.**

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


5
6 Section 3. Appropriations Limit Increase. Pursuant to California Constitution
7 Article XIII B and applicable laws, for four years from November 6, 2018, the appropriations
8 limit for the City shall be increased by the aggregate sum collected by the levy of the tax
9 imposed under this ordinance.

10
11 Section 4. Effective and Operative Dates. The effective date of this ordinance shall be
12 10 days after the date the official vote count is declared by the Board of Supervisors. This
13 ordinance shall become operative on January 1, 2020.

14
15 APPROVED AS TO FORM:

16 DENNIS J. HERRERA, City Attorney

17
18 By:

19 
MOE JAMIL
Deputy City Attorney

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LEGISLATIVE DIGEST

(Amended in Committee – Second Draft – 7/12/18)

[Initiative Ordinance - Business and Tax Regulations Code - Additional Gross Receipts Tax on Cannabis]

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, 2020, 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 for 2020 to be set at a rate of 1%, which will increase in 2021 to between 1% and 5% depending on the type of cannabis business activity and amount of gross receipts, and which 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 increasing the City's appropriations limit by the amount collected under the new 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.

Amendments to Current Law

Beginning on January 1, 2020, 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.

For the tax year commencing on January 1, 2020, the Cannabis Business Tax rate would be 1% for all cannabis business activities. In subsequent years, 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.

This ordinance would also increase the City's appropriations limit under Article XIII B 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.

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