

AMENDED IN COMMITTEE

7/19/18

FILE NO. 180765

MOTION NO.

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

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

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:

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

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  
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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

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