



OFFICE OF THE CITY ATTORNEY
Long Beach, California

NB-24

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August 2, 2016

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

1. Receive and file a Medical Marijuana Initiative-Analysis report from the City Manager regarding the proposed initiative petition entitled Regulation of Medical Marijuana Businesses;
2. Adopt a Resolution calling for the placement of a voter-petition initiative measure on the ballot for the November 8, 2016 special election to repeal the City's ban on medical marijuana businesses; adopt new regulations to permit and regulate medical marijuana businesses; to repeal the City's current recreational marijuana business license tax; and to reduce the City's current rate of medical marijuana business license taxes;
3. Adopt a Resolution providing for the filing of primary and rebuttal arguments and setting rules for the filing of written arguments regarding the voter-petition initiative measure to be submitted at the November 8, 2016 special municipal election;
4. Adopt a Resolution calling for the placement of a tax measure on the ballot for the November 8, 2016 special election to amend and update the City's existing marijuana business license tax;
5. Adopt a Resolution providing for the filing of primary and rebuttal arguments and setting rules for the filing of written arguments regarding a City tax measure to be submitted at the November 8, 2016 special municipal election;
6. Adopt a Resolution requesting the Board of Supervisors of the County of Los Angeles to authorize and order the consolidation of a citywide special municipal election with the statewide general election to be held on November 8, 2016, and determining and declaring that the City will pay to the County reasonable and actual expenses incurred by the County on account of the consolidation of this election; and

7. Adopt a Resolution requesting the Board of Supervisors of the County of Los Angeles to render specified services to the City relating to the conduct of a special municipal election to be held on November 8, 2016.

DISCUSSION

On July 12, 2016, the City Council voted to receive and file the City Clerk certification of the petition regarding the Regulation of Medical Marijuana Businesses. In addition, the City Council voted to submit the Regulation of Medical Marijuana Businesses proposed initiative ordinance, without alteration, to a vote of the electorate on Tuesday, November 8, 2016. Further, the City Council requested that the City Manager prepare a report regarding the impacts of the proposed initiative.

On July 19, 2016, the City Council voted to request the City Attorney to prepare a ballot initiative to amend and update the City's existing Marijuana Business License Tax for a vote of the electorate on Tuesday, November 8, 2016.

Pursuant to Proposition 218 (California Constitution, Article XIIC, Section 2(b)) any measure proposing to impose a new general tax, or increase or extend an existing general tax must be consolidated with a regularly scheduled election for members of the City Council, unless the City Council makes certain emergency findings by unanimous vote to place the measure on a special election at another date. Therefore, based upon the California Constitution, in order for the City Council to place the attached Marijuana Business License Tax, as a general tax, on the ballot in November of 2016, the City Council must, by unanimous vote, make certain emergency findings as identified in the attached Resolution. Emergency findings are not required to place a special tax on the November 8, 2016 ballot.

As requested by the City Council, the proposed Marijuana Business License Tax measure establishes a gross receipts tax of 6% on medical marijuana dispensaries and delegates authority to increase that tax to a maximum rate of 8% by a majority vote of the City Council; establishes a gross receipts tax of 8% on the non-medical sale of marijuana for adult use and delegates authority to increase that tax to a maximum rate of 12% by a majority vote of the City Council; establishes a gross receipts tax of 6% on any business located in Long Beach that engages in manufacturing, testing, processing, distributing, packaging or labeling of marijuana products (medical or non-medical) for wholesale to other retail marijuana businesses that will sell those products to customers and delegates authority to increase that tax to a maximum rate of 8% by a majority vote of the City Council; and establishes a tax of \$12 per square foot of space dedicated to the cultivation of marijuana (canopy area), and delegates authority to increase that tax to a maximum rate of \$15 per square foot by majority vote of the City Council. In addition this per square foot tax

will be subject to a Consumer Price Index (CPI) increase. The proposed Marijuana Business License Tax does conflict with the tax provisions or sections of the Kelton initiative regarding the Regulation of Medical Marijuana Businesses but does not conflict or challenge the other sections of the Kelton initiative that qualified for the ballot through signature gathering.

TIMING CONSIDERATIONS

Adoption of the recommended actions will facilitate the timely filing of the proposed initiative ordinance and the City Council Marijuana Business License Tax ordinance with the Los Angeles County Registrar-Recorder/County Clerk and the appointment of argument writers as required by the Long Beach Municipal Code.

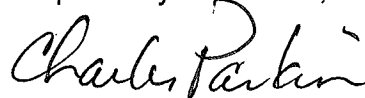
FISCAL IMPACT

The City Clerk has estimated the cost to consolidate the foregoing measures on the Statewide General Election ballot to be approximately \$538,000.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



CHARLES PARKIN
City Attorney

CP:kjm

A16-01453

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Attachments

RESOLUTION NO. RES-16-

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH, CALLING FOR THE PLACEMENT
OF A GENERAL TAX MEASURE ON THE BALLOT FOR
THE NOVEMBER 8, 2016 SPECIAL ELECTION TO AMEND
AND UPDATE THE CITY'S EXISTING MARIJUANA
BUSINESS LICENSE TAX

WHEREAS, pursuant to the California Elections Code, a petition has been filed with the City Council of the City of Long Beach ("City") proposing an ordinance which would (i) repeal the City's current ban on medical marijuana businesses under Long Beach Municipal Code (L.B.M.C.) Chapter 5.89, (ii) adopt a new L.B.M.C. Chapter 5.90 to permit and regulate medical marijuana businesses within the City, (iii) repeal the recreational marijuana business license taxes currently set forth in L.B.M.C. Section 3.80.260, and (iv) reduce the maximum rate and methodology of marijuana business license taxes currently set forth in L.B.M.C. Section 3.80.261 (the "Kelton Measure"); and

WHEREAS, the City Clerk's Office has examined the records of voter registration and ascertained that the petition was signed by the requisite number of voters, and has so certified; and

WHEREAS, the City Council has not voted in favor of adoption of the Kelton Measure and therefore, pursuant to the California Elections Code, adopted Resolution No. 16-0059 to place the Kelton Measure before the City's voters on the November 8, 2016 special election ballot; and

WHEREAS, the City's recreational marijuana business license taxes under L.B.M.C. Section 3.80.260 were approved by a majority of the City's voters at the November 2, 2010 election (Measure "B"); and

WHEREAS, the City's existing marijuana business license taxes under L.B.M.C. Section 3.80.261 were approved by a majority of the City's voters at the April 8,

1 2014 election (Measure "A"); and

2 WHEREAS, a Statewide initiative measure has qualified for the November
3 8, 2016 ballot known as the "Control, Regulate and Tax Adult Use of Marijuana Initiative"
4 (Proposition 64). If passed by California voters, Proposition 64 would legalize the
5 personal use of cannabis/marijuana for recreational purposes, and would allow local
6 agencies to reasonably regulate and tax activities tied to cannabis/marijuana.

7 WHEREAS, the City Council desires to place a competing tax measure on
8 the November 8, 2016 special election ballot that would repeal the recreational marijuana
9 business license taxes currently set forth in L.B.M.C. Section 3.80.260 (Measure "B"),
10 and would amend and update the City's existing marijuana business license taxes under
11 L.B.M.C. Section 3.80.261 (Measure "A"), which rates are different than those provided in
12 the Kelton Measure; and

13 WHEREAS, the City's existing marijuana business license taxes under
14 L.B.M.C. Section 3.80.261 are declared to be general taxes, the revenue of which will be
15 placed in the City's general fund and may be used to pay for regulation and enforcement,
16 public health and safety functions and emergency response services associated with
17 marijuana businesses, and other general City services; and

18 WHEREAS, pursuant to Proposition 218 (California Constitution, Article
19 XIIC, Section 2(b)) any measure proposing to impose a new general tax, or increase or
20 extend an existing general tax must be consolidated with a regularly scheduled election
21 for members of the City Council, unless the City Council makes certain fiscal emergency
22 findings by unanimous vote to place the measure on a special election at another date;
23 and

24 WHEREAS, the next regularly scheduled election at which City Council
25 members are to be elected is not until April, 2018; and

26 WHEREAS, for the following reasons, the health, safety and general
27 welfare of the citizens of the City would be endangered if the City were unable to place
28 this Measure before its voters until April, 2018; and

1 WHEREAS, the Kelton Measure has been placed on the ballot for the
2 November 8, 2016 election which authorizes medical marijuana businesses to operate in
3 Long Beach under a specified set of regulations; and

4 WHEREAS, the Kelton Measure prohibits regulatory fees to be assessed
5 on medical marijuana businesses, and;

6 WHEREAS, the Kelton Measure provides for taxes and associated tax
7 revenues from medical marijuana businesses that could be used to pay for regulatory,
8 enforcement and other City service costs associated with those businesses; and

9 WHEREAS, a comprehensive operational and financial analysis has been
10 conducted of the various operational costs and tax revenue scenarios which may occur
11 with the passage of the Kelton Measure; and

12 WHEREAS, the analysis shows that for a number of reasonably likely
13 conditions under which medical marijuana will be cultivated, manufactured, and sold in
14 Long Beach, the cost of regulating, enforcing the regulations, and managing the City's
15 service costs associated with medical marijuana may be significantly more than the
16 revenues provided from the medical marijuana tax revenue that is likely to be forthcoming
17 if the Kelton Measure passes; and

18 WHEREAS, because the cost of regulating, enforcing and providing related
19 services associated with medical marijuana is likely to exceed the revenue generated,
20 authorization of medical marijuana businesses by the Kelton Measure will likely result in a
21 significant budgetary shortfall, which is likely to result in reductions in other services
22 and/or increases in public safety response times to residents; and

23 WHEREAS, the Kelton Measure significantly reduces or eliminates the
24 existing voter approved tax rate for recreational marijuana dispensaries, which, if the
25 State ballot measure on marijuana is approved (Proposition 64), could substantially
26 reduce marijuana tax revenues and create substantially more severe service reductions
27 and/or increases in public safety response times to residents; and

28 WHEREAS, the Kelton Measure will likely create a several million dollar

1 “start-up” cost shortfall, which can only be recovered through future tax revenues, that
2 only higher tax rates may provide; and

3 WHEREAS, a change in the marijuana business tax rates, including the
4 option of City Council to adjust the tax rates to match costs and needs, would potentially
5 allow revenue from marijuana businesses to fund the associated costs and to assist with
6 public safety and other general municipal services; and

7 WHEREAS, all of the circumstances described above create a fiscal
8 emergency situation warranting the placement of this Measure on the next available
9 special election ballot to permit the City’s voters to decide pursuant to Proposition 218.

10 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
11 follows:

12 Section 1. Incorporation of Recitals. The foregoing recitals are true and
13 correct and are hereby incorporated and made an operative part of this Resolution.

14 Section 2. Findings. Pursuant to California Constitution, Article XIII C,
15 Section 2(b), the City Council, by a unanimous vote, hereby declares the existence of an
16 emergency in that there are imminent financial risks and dangers, as described above, to
17 the public welfare and the City’s financial ability to provide necessary municipal services
18 without disruption, so that a special election is necessary to address such risks and
19 dangers.

20 Section 3. Submission of Measure. Pursuant to the California Elections
21 Code and any other applicable requirements of the laws of the State of California relating
22 to charter cities, the City Council, by a unanimous vote, hereby calls and orders to be
23 held in the City of Long Beach on Tuesday, November 8, 2016, a Special Municipal
24 Election for the purpose of submitting the ballot measure ordinance attached hereto as
25 Exhibit “A” and incorporated herein by this reference to the qualified electors of the City
26 (the “Marijuana Business License Tax Measure”).

27 Section 4. Ballot Language. The City Council, pursuant to Elections
28 Code Section 9222, hereby orders that the following question be submitted to the

qualified electors of the City of Long Beach at the election to be held on November 8, 2016:

<p>"LONG BEACH MARIJUANA TAXATION MEASURE</p> <p>To fund public health and safety services, marijuana regulation, enforcement, and general City services, shall Long Beach update gross receipts tax rates between 6-8% for medical marijuana dispensaries, 8-12% for nonmedical marijuana dispensaries, 6-8% for processing, distributing, transporting or testing marijuana/related products and a square foot tax between \$12-15 for marijuana cultivation, raising approximately \$13 million annually, requiring annual expenditure reports, until ended by voters?"</p>	YES
	NO

Section 5. Impartial Analysis. Pursuant to the Long Beach Municipal Code and the California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the Marijuana Business License Tax Measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the Measure, not to exceed 500 words in length, showing the effect of the Measure on the existing law and the operation of the Measure, and transmit such impartial analysis to the City Clerk not later than the deadline for submittal of primary arguments for or against the Measure.

The impartial analysis shall include a statement indicating whether the Measure was placed on the ballot by a petition signed by the requisite number of voters or by the City Council. In the event the entire text of the Measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, the following:

"The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the Office of the City Clerk at (562) 570-6101 and a copy will be mailed at no cost to you."

Section 6. Conduct of Election. In all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding

1 municipal elections.

2 Section 7. Notice; City Clerk Authorization. Notice of the election is
3 hereby given. Additionally, the City Clerk is authorized, instructed and directed to
4 procure and furnish any and all official ballots, notices, printed matter and all supplies,
5 equipment and paraphernalia that may be necessary in order to properly and lawfully
6 conduct the election.

7 Section 8. Election Costs. The City Treasurer is hereby authorized and
8 directed to appropriate the necessary funds to pay for the City's cost of placing the
9 Measures on the election ballot.

10 Section 9. CEQA. The City Council finds that this Resolution is not
11 subject to the California Environmental Quality Act (CEQA) pursuant to Sections
12 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect
13 physical change in the environment), and 15060(c)(3) (the activity is not a project as
14 defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title
15 14, Chapter 3, because it has no potential for resulting in physical change to the
16 environment, directly or indirectly.

17 Section 10. Severability. The provisions of this Resolution are severable
18 and if any provision of this Resolution is held invalid, that provision shall be severed from
19 the Resolution and the remainder of this Resolution shall continue in full force and effect,
20 and not be affected by such invalidity.

21 Section 11. Effective Date; Certification. This resolution shall take effect
22 immediately upon its adoption by the City Council, and the City Clerk shall certify the vote
23 adopting this resolution.

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OFFICE OF THE CITY ATTORNEY
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Exhibit "A"
Marijuana Business License Tax Ordinance

[attached behind this page]

ORDINANCE NO. ORD-16-

MEASURE " 1 "

AN ORDINANCE OF THE CITY OF LONG BEACH REPEALING SECTION 3.80.260 AND AMENDING SECTION 3.80.261 OF THE LONG BEACH MUNICIPAL CODE TO UPDATE A BUSINESS LICENSE TAX ON MARIJUANA BUSINESSES OPERATING WITHIN THE CITY OF LONG BEACH.

The City Council of the City of Long Beach ordains as follows:

SECTION 1. Section 3.80.260 of the Long Beach Municipal Code is hereby repealed in its entirety.

SECTION 2. Section 3.80.261 of the Long Beach Municipal Code is hereby amended to read as follows:

"Section 3.80.261 – Marijuana Businesses.

A. Definitions.

For purposes of this Section, the following terms shall be defined as follows:

1. "Gross Receipts" shall mean any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration including any monetary consideration for marijuana whatsoever, including, but not limited to, membership dues, reimbursements or the total amount of cash or in-kind contributions, including all operating costs related to the growth, cultivation, processing, storage, delivery or provision of marijuana or any transaction related thereto. The term "Gross Receipts" shall also include the total amount of the sale price of all sales, the total amount charged or received for the performance of any act, service or employment of whatever nature it may be, whether or not such service, act or employment is done as a part of or in connection with the sale of goods, wares, merchandise, for which a charge is made or credit allowed, including all refunds, cash credits and properties of any amount or nature, any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom, on account of the cost of the property sold, the cost of materials used, the labor or service cost, interest paid or payable, losses, or any other expense whatsoever; provided that cash discounts allowed or payment on sales shall not be included. "Gross Receipts" shall not include the amount of any federal tax imposed on or with respect to retail sales whether imposed upon the retailer or the consumer and regardless of whether or not the amount of federal tax is stated to customers as a separate charge, or any California state, city or city and county sales or use tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser, or such part of the sales price of any property previously sold and returned by the purchaser to the seller which is refunded by the seller by way of cash or credit allowances given or taken as

part payment on any property so accepted for resale. "Gross Receipts" shall be calculated without any deduction on account of any of the following:

- a. The cost of tangible property sold or bartered;
 - b. The cost of materials or products used, labor or service cost, interest paid, losses, or other expense; or
 - c. The cost of transportation of the marijuana, or other property or product.
2. "Income Tax Exempt Non-Profit Organization" shall mean any association, corporation or other entity that is exempt from taxation measured by income or gross receipts under Article XIII, Section 26 of the California Constitution.
 3. "Marijuana" shall mean all parts of the plant *Cannabis sativa Linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin; whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" also means the separated resin, whether crude or purified, obtained from marijuana. "Marijuana" also means the term as defined in California Health and Safety Code Section 11018 and is not limited to medical marijuana.
 4. "Marijuana Business" shall mean any business, whether operating for profit or not for profit, which performs any of the following activities: marijuana cultivation, delivering, distribution, processing, transporting, dispensing, selling at retail or wholesale, manufacturing, compounding, converting, preparing, storing, packaging, or testing. "Marijuana Business" includes both a Medical Marijuana Business and Non-Medical Marijuana Business. "Marijuana Business" does not include personal medical marijuana cultivation that is specifically permitted by state law or the Long Beach Municipal Code.
 5. "Marijuana Cultivation" shall mean the seeding, planting, watering, warming, cooling, growing, cultivating, harvesting, drying, curing, grading or trimming of marijuana.
 6. "Marijuana Delivery" shall mean the commercial transfer of marijuana or marijuana products from a marijuana business to a retail or wholesale customer.
 7. "Marijuana Distribution" or "Marijuana Transport" shall mean any activity involving the commercial procurement, sale, transfer and/or transport of marijuana and marijuana products from one Marijuana Business to another Marijuana Business for purposes authorized pursuant to state law or the Long Beach Municipal Code.
 8. "Marijuana Processing" shall mean any activity involving the manufacturing, production, preparation, propagation, processing, converting, or compounding of raw marijuana or marijuana products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that

packages or repackages marijuana or marijuana products or labels, packages or relabels its container.

9. "Marijuana Product" shall mean marijuana that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. "Marijuana Product" also means marijuana products as defined by California Health and Safety Code Section 11018.1 and is not limited to medical marijuana products.
10. "Marijuana Retail Sale" shall mean any activity involving the retail sale to customers of marijuana, marijuana products, or devices for the use of marijuana or marijuana products, either individually or in any combination, including marijuana delivery as part of a retail sale.
11. "Marijuana Testing" means any activity involving the testing of marijuana or marijuana products by a facility that is both of the following:
 - a. Accredited by an accrediting body that is independent from all other persons involved in the marijuana industry in the state; and
 - b. Registered with the California State Department of Public Health.
12. "Medical Marijuana Business" shall mean any Marijuana Business which performs marijuana cultivation, delivering, distribution, processing, transporting, dispensing, selling at retail or wholesale, manufacturing, compounding, converting, preparing, storing, packaging, or testing, for the ultimate consumption or use of marijuana by qualified patients in accordance with California Health and Safety Code Sections 11362.5 et. seq., the California Medical Marijuana Regulation and Safety Act ("MMRSA"), and any other State law authorizing activities related to the medical use of marijuana.
13. "Non-Medical Marijuana Business" shall mean any business which performs marijuana cultivation, delivering, distribution, processing, transporting, dispensing, selling at retail or wholesale, manufacturing, compounding, converting, preparing, storing, packaging, or testing, for any other purpose than as a Medical Marijuana Business.
14. "Personal Medical Marijuana Cultivation" means cultivation by a qualified patient who cultivates one hundred (100) square feet total canopy area or less of marijuana exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute marijuana to any other person. "Personal Medical Marijuana Cultivation" also includes cultivation by a primary caregiver who cultivates one hundred (100) square feet total canopy area or less of marijuana exclusively for the personal medical purposes of no more than five (5) specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code Section 11362.765(c), as it may be amended.

15. "Square Foot under Cultivation" or "Square Footage under Cultivation" shall mean the actual amount of canopy (measured by the aggregate area of vegetative growth of live marijuana plants on the premises including the area occupied by vertically and horizontally stacked canopies) that is limited by the maximum amount a marijuana business is authorized to cultivate by either a City permit or license, or by a state license in the absence of a City permit or license, not deducting for unutilized square footage.

B. Business License Tax.

1. Every Marijuana Business whether organized as not-for-profit or for-profit, shall pay a business license tax in accordance with Chapter 3.80 of this Code and this Section.
2. For the purposes of this Section, a Marijuana Business is considered to be a business as that term is defined in Long Beach Municipal Code Section 3.80.133.
3. For the purposes of this Section, a Marijuana Business is not considered to be a religious or charitable organization as defined in Long Beach Municipal Code Section 3.80.320 (Exemption - Religious and charitable organizations).
4. The business tax set forth in this section is a general tax, the revenues from which shall be deposited into the City's general fund and may be expended for any valid public purpose of the City.

C. Business License Tax Rates.

1. Every medical marijuana business engaged in marijuana retail sale or delivery within the City shall pay a business tax at a rate of up to eight percent (8%) of gross receipts. The tax shall be initially set at a rate of six percent (6%). The tax under this paragraph shall not be increased on medical marijuana businesses unless and until the City Council by ordinance takes action, and the tax rate shall not exceed eight percent (8%) of gross receipts.
2. Every non-medical marijuana business engaged in marijuana retail sale or delivery within the City shall pay a business tax at a rate of up to twelve percent (12%) of gross receipts. The tax shall be initially set at a rate of eight percent (8%). The tax under this paragraph shall not be increased on non-medical marijuana businesses unless and until the City Council by ordinance takes action, and the tax rate shall not exceed twelve percent (12%) of gross receipts.
3. If a marijuana business is engaged in retail sales or delivery of both medical marijuana and a non-medical marijuana, it shall pay the business tax set forth in paragraph C.2., unless the marijuana business identifies to the City, by reasonable and verifiable standards, the portions of its retail sales activities that are tied to medical marijuana and those that are tied to non-medical marijuana, through the marijuana business' books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not specifically

created and maintained for tax purposes. The marijuana business has the burden of proving the proper apportionment of taxes under this paragraph C.3.

4. Every marijuana business, whether medical or non-medical, that is engaged in marijuana distribution, transport, processing, or testing within the City, shall pay business tax at a rate of up to eight percent (8%) of gross receipts. The tax shall be initially set at a rate of six percent (6%). The tax under this section shall not be increased on marijuana businesses unless and until the City Council by ordinance takes action, and the tax rate shall not exceed eight percent (8%) of gross receipts. If a marijuana business that is engaged in marijuana distribution, transport, processing, or testing, is also engaged in marijuana retail sale or delivery of the same marijuana and marijuana products, then it shall pay the business taxes set forth in paragraphs C.1. or C.2., as applicable, for retail sale or delivery of any marijuana or marijuana products and is not required to pay the business taxes set forth in this paragraph for marijuana distribution, transport, processing, or testing for the same marijuana and marijuana products. The marijuana business has the burden of proving that the marijuana or marijuana products involved in distribution, transport, processing, or testing are the same.
5. In addition to the taxes set forth in paragraphs C.1., C.2., and C.4., every marijuana business, whether medical or non-medical, engaged in marijuana cultivation shall pay a tax of up to fifteen dollars (\$15.00) per square foot under cultivation. The tax shall initially be set at a rate of twelve dollars (\$12.00) per square foot under cultivation. The City Council may by ordinance increase any such tax rate from time to time, not to exceed the maximum tax rate of fifteen dollars (\$15.00) per square foot under cultivation.
6. Notwithstanding the maximum tax rates imposed in paragraphs C.1., C.2., C.4. and C.5., the City Council may in its discretion at any time by ordinance implement a lower tax rate, as defined in such ordinance, subject to the maximum rates set forth in C.1., C.2., C.4. and C.5. City Council may subsequently in its discretion at any time by ordinance implement a higher tax rate, subject to the maximum rates set forth in C.1., C.2., C.4. and C.5., and such increase does not constitute a tax increase for which voter approval is required Article XIII C of the California Constitution.
7. All marijuana businesses shall pay a minimum tax of one thousand dollars (\$1,000.00) annually.

D. Modification, Repeal or Amendment.

The City Council may repeal the ordinance codified in this Section, or amend it in a manner which does not result in an increase in the tax or taxes imposed herein, without further voter approval. If the City Council repeals said ordinance or any provision of this Section, it may subsequently reenact it without voter approval, as long as the reenacted ordinance or Section does not result in an increase in the tax or taxes beyond the maximum rate or methodology imposed herein.

1 E. Annual Adjustment.

2 The taxes imposed by paragraph C.5 shall be adjusted annually by the Director of Financial
3 Management. Beginning on October 1, 2018, and on October 1 of each succeeding year thereafter,
4 the amount of each tax imposed by paragraph C.5 shall be adjusted equivalent to the most recent
5 change in the annual average of the Consumer Price Index ("CPI") for all urban consumers in the
6 Los Angeles-Riverside-Orange County areas as published by the United States Government Bureau
7 of Labor Statistics; however no adjustment shall decrease any tax imposed by paragraph C.5. For
the purposes of calculating the annual adjustment factor under paragraph C.5, the base year shall be
that year ending with December 31, 2016. Rates shall next be adjusted on October 1, 2018, and
annually thereafter, based on the annually calculated change from the base year. The October 1,
2018, adjustment shall be the change in the average CPI for the year ending December 31, 2017,
compared to the base year ending December 31, 2016.

8 F. Administration.

9 The City Manager, or designee, and/or the City Council by ordinance, may promulgate
10 regulations to implement and administer this Section including, but not limited to regulations
11 allowing Marijuana Businesses to report and or remit taxes more or less frequently than monthly.
The City Manager shall provide no less than annually a report to the City Council detailing annual
expenditures.

12 G. Reporting and Remittance.

13 In order to aid in the City's collection of taxes due under this Section and to ensure that all
14 Marijuana Businesses are taxed consistently to the best of the City's ability, beginning as set forth
15 in Section K, below, and monthly thereafter, each Marijuana Business shall report to the City any
16 Gross Receipts received during the reporting period and shall likewise remit to the City the taxes
17 due and owing during said period. For purposes of this Section, taxes shall begin to accrue on the
18 date that a person or entity first receives a business license or other permit to operate as a Marijuana
19 Business or Cultivation Site. Square Footage payments shall be made annually at the beginning of
the calendar year and should be based on the square footage that the marijuana business is authorized
to cultivate by either a City permit or license, or by a state license in the absence of a City permit or
license, not deducting for unutilized square footage, pro-rated based on the number of months of
operation.

20 H. Delinquent date-Penalties.

21 Any individual or entity who fails to pay the taxes required by this Section within thirty (30)
22 days after the due date shall pay in addition to the taxes a penalty for nonpayment in a sum equal to
23 twenty-five percent (25%) of the total amount due. Additional penalties will be assessed in the
24 following manner: ten percent (10%) shall be added on the first day of each calendar month
following the month of the imposition of the twenty-five percent (25%) penalty if the tax remains
unpaid; up to a maximum of one hundred percent (100%) of the tax payable on the due date. Receipt
of the tax payment in the office shall govern the determination of whether the tax is delinquent.
Postmarks will not be accepted as adequate proof of a timely payment.

25 I. Records Inspection.

26 Whenever it is necessary to examine any books or records, including tax returns, of any
27 Marijuana Business or Cultivation Site in the City to ascertain the amount of any tax due pursuant
28 to this Section, the City shall have the power and authority to examine such necessary books and

records at any reasonable time including, but not limited to, during normal business hours. Records must be maintained for no less than seven (7) years.

J. Suspension, Revocation and Appeal.

The provisions of Sections 3.80.429.1 (Suspension or Revocation) and 3.80.429.5 (Appeal of License Revocation) shall apply in the case of Marijuana Businesses or Cultivation Sites governed by this Section.

K. Application of Provisions.

No business license permit issued under the provisions of this Code, or the payment of any tax required under the provisions of this Code shall be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this Section implies or authorizes that any activity connected with the distribution or possession of cannabis is legal unless otherwise authorized and allowed by California and federal law. Nothing in this Section shall be applied or construed as authorizing the sale of marijuana.

L. Operative Date.

This ordinance establishing a marijuana business tax shall only become operative 1) if Chapter 5.89 of the Long Beach Municipal Code (banning marijuana businesses in the City of Long Beach) is repealed and 2) if a regulatory scheme to permit marijuana businesses within the City is adopted. The tax shall become effective on the effective date of the regulatory ordinance as provided by law

SECTION 3. Approval by the Voters/Competing Measure.

A. Pursuant to California Elections Code Section 9217, this Ordinance must be approved by at least a majority of the eligible voters of the City of Long Beach voting at the Special Election of November 8, 2016.

B. Further, pursuant to California Elections Code 9221, this Ordinance is expressly declared by the voters to conflict with Section 2 of Long Beach Measure “ ” (the “Kelton Measure” establishing a different rate and methodology of marijuana business license taxation). Therefore, if both this Ordinance and Section 2 of the Kelton Measure are approved by a majority of eligible Long Beach voters, the provision receiving the highest number of affirmative votes shall become effective and the other shall be of no force and effect.

C. Either this Ordinance or Section 2 of the Kelton Measure, whichever receives the highest number of affirmative votes pursuant to California Elections Code Section 9221, shall be deemed adopted and take effect ten (10) days after the City Council has certified the results of that election by resolution.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 5. Certification/Summary. Following the City Clerk’s certification that the citizens of Long Beach have approved this Ordinance, the Mayor shall sign this Ordinance and the City Clerk shall cause the same to be entered in the book of original ordinances of said City; and shall cause the same, or a summary thereof, to be published as required by law.