



OFFICE OF THE CITY ATTORNEY
Long Beach, California

R-15

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January 7, 2014

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HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

1. Adopt the attached Resolution Version A or Version B regarding a proposed ballot measure to be placed on the April 8, 2014 ballot for the purpose of submitting to the voters of the City of Long Beach an ordinance amending Chapter 3.80 of the Long Beach Municipal Code, relating to Marijuana Business License General tax; and
2. Request the Office of the Mayor to designate persons, or associations of persons, to write arguments either for or against or both for and against the adoption of the measure placed on the ballot. (Citywide)

DISCUSSION

On December 17, 2013, the City Council requested this Office to prepare the documents necessary to place a proposed measure on the April 8, 2014 ballot to tax medical marijuana businesses in the City of Long Beach. At the December 17, 2013 Council meeting, the City Council requested that the proposed ordinance include options from which the Council could choose.

This Office therefore prepared and now transmits the ballot resolution, to which are attached two alternative ballot ordinances: Version A, which presents a tax rate of 6% (\$60 per \$1000 of gross receipts), with an annual CPI adjustment; or Version B, which presents a tax rate not to exceed 10% (\$100 per \$1000 of gross receipts), with an initial rate of 6%, with an annual CPI adjustment.

Taxation Rate

Voter approval is required for all new or increased taxes, under Proposition 218. The adoption of a "general" tax must usually be considered on a ballot where one or more of the local legislators is up for election or reelection. A general tax must be adopted by a simple majority of voters, and revenue obtained from such a tax belongs to the City's general fund. A "special" tax, by contrast, must be approved

by a two-thirds majority of voters and may be earmarked for a special purpose fund. Both of the options here are for a general tax.

Amendment to LBMC Chapter 3.80

The proposed amendment would impose a tax on gross receipts earned by a medical marijuana business.

Version A

The proposed measure in Version A fixes the tax rate on marijuana businesses at 6% (or \$60 per \$1000 of gross receipts), with an annual CPI adjustment. This approach is similar to Proposition B, approved by the voters in 2010 for "recreational" marijuana.

Version B

The proposed measure in Version B would allow the City Council some flexibility to impose a tax at the maximum rate of 10% of gross receipts. State law requires that any increase, extension or expansion of a tax requires voter approval; however, the reduction of a tax does not. Therefore, if a majority of voters approves the marijuana business tax at the rate of 10% of gross receipts, the City Council could set a lower initial rate – at 6%, for example – and later raise it by ordinance, as long as it does not exceed the 10% limit.

Gross Receipts

State law prohibits cities from charging certain types of nonprofit organizations a business tax or fee based on gross receipts or income. Although all businesses are currently required by the CUA and the MMPA to be "not for profit," these businesses are not necessarily "non-profits" as defined by the State Constitution, the LBMC and the IRS. Therefore, a tax rate per square foot for those religious and charitable non-profits has been developed. A minimum \$1,000 charge will be applied to all marijuana businesses. If gross receipts or square footage charges exceed \$1,000, then the higher amount will be due.

Medical Marijuana		
Version A: 6% base rate		
Business Type	2014 Proposed Tax Rate	Per
Medical Marijuana Collective	6%	Gross Receipts
Cultivation/Grow Facility	\$30.00	Square Foot
Non Profit Medical Marijuana Collective	\$6.00	Square Foot

Version B: Maximum 10% rate		
Business Type	2014 Proposed Tax Rate	Per
Medical Marijuana Collective	10%	Gross Receipts
Cultivation/Grow Facility	\$50.00	Square Foot
Non Profit Medical Marijuana Collective	\$10.00	Square Foot

Other cities impose taxes on medical marijuana businesses within a range of between 2.5% per \$1000 of gross receipts and 15% per \$1000 of gross receipts. The City of Los Angeles uses a rate of 6%. Oakland initially imposed a rate of 5%, while Berkeley initially imposed a rate of 2.5%. San Jose imposed a tax at a rate not to exceed 10%, with an initial rate of 7%. Long Beach in 2010 approved in Proposition B a 15% tax rate for recreational medical marijuana businesses. (While Proposition B was approved in Long Beach, it was dependent on the enactment of California State Proposition 19, which was not approved by statewide voters.) The City's current business license taxing structure is adjusted annually by the Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange County area.

Payments based on gross receipts are generally determined by an annual audit. Because of the element of self-reporting involved, gross receipts taxes frequently require verification and follow-up.

Operative Date

The proposed amendment, if approved by voters, would not take effect until a regulatory ordinance pursuant to LBMC Chapter 21 is approved the City Council.

Administrative Fees

Administrative fees reflecting the City's costs, including the full cost of enforcement, will be developed along with the regulatory ordinance.

HONORABLE MAYOR AND CITY COUNCIL
January 7, 2014
Page 4

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By: 

AMY B. WEBBER
Deputy City Attorney

ARW:bg A13-02359

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City Council Resolution

City Council Ordinance w/Version A and Version B

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RESOLUTION NO.
(VERSION A)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH PROVIDING THAT A BALLOT MEASURE MAY BE SUBMITTED TO THE QUALIFIED VOTERS OF THE CITY OF LONG BEACH AT THE APRIL 8, 2014 CITYWIDE ELECTION ESTABLISHING A MARIJUANA BUSINESS TAX

WHEREAS, every person engaged in business activity in the City of Long Beach is required to obtain a business tax certificate and to pay the City's business tax; and

WHEREAS, the City of Long Beach has a business tax system which applies to all businesses in the City, and which contains a list of categories of types of businesses, and provides for the collection of business taxes at specified rates based on the classifications of the businesses operating in the City; and

WHEREAS, because marijuana businesses and marijuana cultivation facilities did not exist at the time the business tax system was created, Long Beach's current business tax category list does not contain a specific tax category for such businesses; and

WHEREAS, accordingly, the City Council of the City of Long Beach desires to amend Chapter 3.80 by adding Section 3.80.261 to the Long Beach Municipal Code to create and administer a business license tax on all marijuana businesses located in the City; and

WHEREAS, all revenues received from the tax will be deposited in the General Fund of the City to be expended for general fund purposes; and

WHEREAS, the proposed ordinance shall be submitted to the qualified

1 electors of the City of Long Beach at the next regularly scheduled municipal election for
2 members of the City Council on April 8, 2014;

3 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
4 follows:

5 Section 1. Under the provisions of the Constitution and laws of the State
6 of California and the Charter of the City of Long Beach, at the regularly scheduled
7 primary nominating election to be held in the City of Long Beach, between the hours of
8 7:00 a.m. and 8:00 p.m. on Tuesday, the 8th day of April, 2014, the following proposition
9 which, for identification purposes only, is marked as Proposition X, shall be submitted to
10 a vote of the qualified electors of the City of Long Beach:

11 Proposition X. Long Beach Marijuana General Tax Measure.

12 To protect public safety services such as 911 emergency response,
13 police and fire, as well as essential quality of life programs like parks,
14 libraries, public works and infrastructure, shall the City of Long Beach
15 impose a 6% tax on medical marijuana businesses if legalized, with a \$30
16 tax on cultivation sites per square foot, with an annual CPI adjustment?

17 Section 2. Notice is hereby given of the time and place of the election.

18 The City Clerk is directed and authorized to print and publish the proposition as required
19 by law. All particulars not provided in this resolution shall be held under the provisions of
20 law governing the conduct of such elections in the City of Long Beach.

21 Section 3. The proposition shall be stated as provided in Section 13119
22 of the Elections Code of the State of California. The ballot used in voting upon the
23 propositions shall contain the words "yes" and "no". The text of Proposition X is set forth
24 in full in Exhibit "A".

25 Section 4. That only qualified voters of the City of Long Beach shall be
26 permitted to vote in the election called by this resolution.

27 Section 5. This resolution shall take effect immediately upon its adoption
28 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

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4. For the purposes of this Section, "Marijuana Business" shall mean any activity that involves, but is not limited to planting, cultivating, harvesting, transporting, dispensing, delivering, selling at retail or wholesale, manufacturing, compounding, converting, processing, preparing, storing, packaging or testing, any part of the plant Cannabis sativa L, or any of its derivatives.

5. For the purposes of this Section, a not for profit, a non-profit, or a "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.

6. For the purposes of this Section, "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, in any calendar year of cash or in-kind contributions, including all operating costs related to the growth, cultivation or provision of marijuana or any transaction related thereto. The term "Gross Receipts" shall also include the total amount, in any calendar year, 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

1 seller to the purchaser without any deduction therefrom, on account
2 of the cost of the property sold, the cost of materials used, the labor
3 or service cost, interest paid or payable, losses, or any other
4 expense whatsoever; provided that cash discounts allowed or
5 payment on sales shall not be included. "Gross receipts" shall also
6 include the amount of any federal, manufacturer's or importer's
7 excise tax included in the price of property sold, even though the
8 manufacturer or importer is also the retailer thereof and whether or
9 not the amount of such tax is stated as a separate charge. "Gross
10 receipts" shall not include the amount of any federal tax imposed on
11 or with respect to retail sales whether or not the amount of such tax
12 is stated as a separate charge. "Gross receipts" shall not include the
13 amount of any federal tax imposed on or with respect to retail sales
14 whether imposed upon the retailer or the consumer and regardless
15 of whether or not the amount of federal tax is stated to customers as
16 a separate charge, or any California state, city or city and county
17 sales or use tax required by law to be included in or added to the
18 purchase price and collected from the consumer or purchaser, or
19 such part of the sales price of any property previously sold and
20 returned by the purchaser to the seller which is refunded by the
21 seller by way of cash or credit allowances given or taken as part
22 payment on any property so accepted for resale. Gross Receipts
23 shall be calculated without any deduction on account of any of the
24 following:

- 25 a. The cost of tangible property sold or
26 bartered;
- 27 b. The cost of materials or products used,
28 labor or service cost, interest paid, losses, or other expense; or

1 c. The cost of transportation of the
2 marijuana, or other property or product.

3 7. For the purposes of this Section, "Square foot"
4 or "Square footage" shall mean the sum of the gross horizontal areas
5 of all floors, including garages, carports, porches or similar
6 structures, parking structures, usable basement areas, cellars,
7 hallways, or common areas below the roof and within the outer
8 surface of the main walls of buildings (or the center lines of party
9 walls separating such buildings or portions thereof) or within the lines
10 drawn parallel to and two feet (2') within the roof line of any building
11 or portion thereof without walls (which includes square footage of all
12 porches), and including pedestrian walkways or corridors. For
13 purposes of this Section, the portion of a site devoted to retail sales
14 shall not be included in the square footage calculation unless it is for
15 a non-profit as defined by this Chapter.

16 8. For the purposes of this Section, a "Marijuana
17 Business," "Cultivation Facility" or "Grow Site" shall mean the square
18 footage of any place or location where marijuana or any of its
19 derivatives is cultivated, grown, harvested, packaged, processed or
20 stored.

21 B. Business license tax rates for marijuana businesses
22 and cultivation facilities.

23 1. Every Marijuana Business shall pay Sixty
24 Dollars (\$60.00) per thousand dollars of gross receipts as and for its
25 business license tax.

26 2. In addition to the foregoing Section B.1., the
27 owner, operator, or lessee of any "Marijuana Business," "Cultivation
28 Facility" or "Grow Site" existing to supply marijuana to a Marijuana

1 Business shall pay a tax of Thirty Dollars (\$30.00) per square foot on
2 all improvements owned, rented, leased or otherwise occupied or
3 used by a Cultivation Facility or Grow Site.

4 3. Notwithstanding Section 3.80.320 of this Code,
5 there is imposed on every Marijuana Business that is a not for profit,
6 a non profit, or Non-Profit Organization, or a for profit business,
7 including all of its ancillary locations, regardless of the number of
8 square feet it occupies, a tax of Six Dollars (\$6.00) per square foot
9 on all business improvements occupied by that Marijuana Business
10 and Cultivation Facility or Grow Site. For the purpose of this Section,
11 all of the square feet of improvements owned, rented, leased or
12 otherwise occupied or used by a Marijuana Business within the City
13 shall be cumulated.

14 4. All Marijuana Businesses or Marijuana
15 Cultivation Facilities shall pay a minimum tax of One Thousand
16 Dollars (\$1,000.00) annually.

17 C. Modification, Repeal or Amendment.

18 The City Council may repeal the ordinance codified in this
19 Section, or amend it in a manner which does not result in an increase in
20 the tax or taxes imposed herein, without further voter approval. If the City
21 Council repeals said ordinance or any provision of this Section, it may
22 subsequently reenact it without voter approval, as long as the reenacted
23 ordinance or section does not result in an increase in the tax or taxes
24 imposed herein.

25 D. Administration.

26 The City Manager, or designee, and/or the City Council by
27 ordinance, may promulgate regulations to implement and administer this
28 Section including, but not limited to regulations allowing Marijuana

1 Businesses to remit taxes less frequently than monthly.

2 E. Annual Adjustment.

3 The taxes imposed by this Section shall be adjusted
4 annually by the Director of Financial Management. Beginning on July 1,
5 2016, and on July 1 of each succeeding year thereafter, the amount of
6 each tax imposed by this Section shall be adjusted equivalent to the most
7 recent change in the annual average of the Consumer Price Index (CPI)
8 for all urban consumers in the Los Angeles-Riverside-Orange County
9 areas as published by the United States Government Bureau of Labor
10 Statistics; however no adjustment shall decrease any tax imposed by this
11 Section. For the purposes of calculating the annual adjustment factor
12 under this Section, the base year shall be that year ending with December
13 31, 2014. Rates shall next be adjusted on July 1, 2016, and annually
14 thereafter, based on the annually calculated change from the base year.
15 The July 1, 2016 adjustment shall be the change in the average CPI for
16 the year ending December 31, 2015.

17 F. Reporting and Remittance.

18 In order to aid in the City's collection of taxes due under this
19 section and to ensure that all Marijuana Businesses and Cultivation Sites
20 are taxed consistently to the best of the City's ability, beginning as set
21 forth in Section K, below, and monthly thereafter, each Marijuana
22 Business shall report to the City any Gross Receipts received during the
23 reporting period and shall likewise remit to the City the taxes due and
24 owing during said period. For purposes of this Section, taxes shall begin
25 to accrue on the date that a person or entity first receives a business
26 license or other permit to operate as a Marijuana Business or Cultivation
27 Site. Square footage payments shall be made annually at the beginning
28 of the calendar year and should be based on the most recent County

1 Assessors records, pro-rated based on the number of months of
2 operation.

3 G. Delinquent date-Penalty.

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

15 H. Records Inspection.

16 Whenever it is necessary to examine any books or records,
17 including tax returns, of any Marijuana Business or Cultivation Site in the
18 City to ascertain the amount of any tax due pursuant to this Section, the
19 City shall have the power and authority to examine such necessary books
20 and records at any reasonable time including, but not limited to, during
21 normal business hours. Records must be maintained for no less than
22 seven (7) years.

23 I. Suspension, Revocation and Appeal.

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

28 J. Application of Provisions.

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

9 K. Operative Date.

10 This ordinance establishing a medical marijuana business
11 tax shall only become operative 1) if the City repeals section 5.89 of the
12 Long Beach Municipal Code (banning the sale of marijuana in the City of
13 Long Beach) and 2) if the City adopts a regulatory scheme to permit
14 cultivation, dispensing or sale of medical marijuana. The tax shall become
15 effective on the effective date of the regulatory ordinance.

17 Section 2. If any section, sentence, clause, phrase, or portion of
18 this Ordinance is for any reason held to be invalid or unenforceable by a court of
19 competent jurisdiction, the remaining sections, sentences, clauses, phrases, or
20 portions of this ordinance shall nonetheless remain in full force and effect. The
21 people of the City of Long Beach hereby declare that they would have adopted
22 each section, sentence, clause, phrase, or portion of this Ordinance, irrespective
23 of the fact that any one or more sections, sentences, clauses, phrases, or portions
24 of this Ordinance be declared invalid or unenforceable and, to that end, the
25 provisions of this Ordinance are severable.

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OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 Section 3. As provided in Section 2001 of the Long Beach City
2 Charter, if a majority of those electors voting on this ordinance vote in favor of
3 same, it shall be adopted upon a declaration of the result of such ballot by the City
4 Council, and it shall take effect ten (10) days after that date, or the effective date of
5 the regulatory ordinance, whichever is later.

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RESOLUTION NO.
(VERSION B)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH PROVIDING THAT A BALLOT MEASURE MAY BE SUBMITTED TO THE QUALIFIED VOTERS OF THE CITY OF LONG BEACH AT THE APRIL 8, 2014 CITYWIDE ELECTION ESTABLISHING A MARIJUANA BUSINESS TAX

WHEREAS, every person engaged in business activity in the City of Long Beach is required to obtain a business tax certificate and to pay the City's business tax; and

WHEREAS, the City of Long Beach has a business tax system which applies to all businesses in the City, and which contains a list of categories of types of businesses, and provides for the collection of business taxes at specified rates based on the classifications of the businesses operating in the City; and

WHEREAS, because marijuana businesses and marijuana cultivation facilities did not exist at the time the business tax system was created, Long Beach's current business tax category list does not contain a specific tax category for such businesses; and

WHEREAS, accordingly, the City Council of the City of Long Beach desires to amend Chapter 3.80 by adding Section 3.80.261 to the Long Beach Municipal Code to create and administer a business license tax on all marijuana businesses located in the City; and

WHEREAS, all revenues received from the tax will be deposited in the General Fund of the City to be expended for general fund purposes; and

WHEREAS, the proposed ordinance shall be submitted to the qualified

1 electors of the City of Long Beach at the next regularly scheduled municipal election for
2 members of the City Council on April 8, 2014;

3 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
4 follows:

5 Section 1. Under the provisions of the Constitution and laws of the State
6 of California and the Charter of the City of Long Beach, at the regularly scheduled
7 primary nominating election to be held in the City of Long Beach, between the hours of
8 7:00 a.m. and 8:00 p.m. on Tuesday, the 8th day of April, 2014, the following proposition
9 which, for identification purposes only, is marked as Proposition X, shall be submitted to
10 a vote of the qualified electors of the City of Long Beach:

11 Proposition X. Long Beach Marijuana General Tax Measure.

12 To protect public safety services such as 911 emergency response,
13 police and fire, as well as essential quality of life programs like parks,
14 libraries, public works and infrastructure, shall the City of Long Beach
15 impose a tax not to exceed 10% on medical marijuana businesses if
16 legalized, with a \$50 tax on cultivation sites per square foot, with an annual
17 CPI adjustment?

18 Section 2. Notice is hereby given of the time and place of the election.
19 The City Clerk is directed and authorized to print and publish the proposition as required
20 by law. All particulars not provided in this resolution shall be held under the provisions of
21 law governing the conduct of such elections in the City of Long Beach.

22 Section 3. The proposition shall be stated as provided in Section 13119
23 of the Elections Code of the State of California. The ballot used in voting upon the
24 propositions shall contain the words "yes" and "no". The text of Proposition X is set forth
25 in full in Exhibit "A".

26 Section 4. That only qualified voters of the City of Long Beach shall be
27 permitted to vote in the election called by this resolution.

28 Section 5. This resolution shall take effect immediately upon its adoption

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

2 I hereby certify that the foregoing resolution was adopted by the City
3 Council of the City of Long Beach at its meeting of _____, 20__, by the
4 following vote:

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6 Ayes: Councilmembers: _____
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10 Noes: Councilmembers: _____
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12 Absent: Councilmembers: _____
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4. For the purposes of this Section, "Marijuana Business" shall mean any activity that involves, but is not limited to planting, cultivating, harvesting, transporting, dispensing, delivering, selling at retail or wholesale, manufacturing, compounding, converting, processing, preparing, storing, packaging or testing, any part of the plant Cannabis sativa L, or any of its derivatives.

5. For the purposes of this Section, a not for profit, a non-profit, or a "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.

6. For the purposes of this Section, "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, in any calendar year of cash or in-kind contributions, including all operating costs related to the growth, cultivation or provision of marijuana or any transaction related thereto. The term "Gross Receipts" shall also include the total amount, in any calendar year, 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

1 seller to the purchaser without any deduction therefrom, on account
2 of the cost of the property sold, the cost of materials used, the labor
3 or service cost, interest paid or payable, losses, or any other
4 expense whatsoever; provided that cash discounts allowed or
5 payment on sales shall not be included. "Gross receipts" shall also
6 include the amount of any federal, manufacturer's or importer's
7 excise tax included in the price of property sold, even though the
8 manufacturer or importer is also the retailer thereof and whether or
9 not the amount of such tax is stated as a separate charge. "Gross
10 receipts" shall not include the amount of any federal tax imposed on
11 or with respect to retail sales whether or not the amount of such tax
12 is stated as a separate charge. "Gross receipts" shall not include the
13 amount of any federal tax imposed on or with respect to retail sales
14 whether imposed upon the retailer or the consumer and regardless
15 of whether or not the amount of federal tax is stated to customers as
16 a separate charge, or any California state, city or city and county
17 sales or use tax required by law to be included in or added to the
18 purchase price and collected from the consumer or purchaser, or
19 such part of the sales price of any property previously sold and
20 returned by the purchaser to the seller which is refunded by the
21 seller by way of cash or credit allowances given or taken as part
22 payment on any property so accepted for resale. Gross Receipts
23 shall be calculated without any deduction on account of any of the
24 following:
25 a. The cost of tangible property sold or
26 bartered;
27 b. The cost of materials or products used,
28 labor or service cost, interest paid, losses, or other expense; or

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c. The cost of transportation of the marijuana, or other property or product.

7. For the purposes of this Section, "Square foot" or "Square footage" shall mean the sum of the gross horizontal areas of all floors, including garages, carports, porches or similar structures, parking structures, usable basement areas, cellars, hallways, or common areas below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within the lines drawn parallel to and two feet (2') within the roof line of any building or portion thereof without walls (which includes square footage of all porches), and including pedestrian walkways or corridors. For purposes of this Section, the portion of a site devoted to retail sales shall not be included in the square footage calculation unless it is for a non-profit as defined by this Chapter.

8. For the purposes of this Section, a "Marijuana Business," "Cultivation Facility" or "Grow Site" shall mean the square footage of any place or location where marijuana or any of its derivatives is cultivated, grown, harvested, packaged, processed or stored.

B. Business license tax rates for marijuana businesses and cultivation facilities.

1. Every Marijuana Business shall pay business tax at a rate of up to ten percent of gross receipts. The tax under this chapter shall not be imposed on marijuana businesses unless and until the City Council by ordinance takes action to set a tax rate not to exceed ten percent of gross receipts.

2. Notwithstanding the maximum tax rate of ten

1 percent (10%) of gross receipts imposed under subsection B.1., the
2 City Council may in its discretion at any time by ordinance implement
3 a lower tax rate for all marijuana businesses, as defined in such
4 ordinance, subject to the maximum rate of ten percent (10%) of
5 gross receipts. The City Council may by ordinance increase any
6 such tax rate from time to time, not to exceed the maximum tax rate
7 of ten percent (10%) of gross receipts established under subsection
8 B.1.

9 3. In addition to the foregoing Section B.1., the
10 owner, operator, or lessee of any "Marijuana Business," "Cultivation
11 Facility" or "Grow Site" existing to supply marijuana to a Marijuana
12 Business shall pay a tax of Fifty Dollars (\$50.00) per square foot on
13 all improvements owned, rented, leased or otherwise occupied or
14 used by a Cultivation Facility or Grow Site.

15 4. Notwithstanding Section 3.80.320 of this Code,
16 there is imposed on every Marijuana Business that is a not for profit,
17 a non profit, or Non-Profit Organization, or a for profit business,
18 including all of its ancillary locations, regardless of the number of
19 square feet it occupies, a tax of Ten Dollars (\$10.00) per square foot
20 on all business improvements occupied by that Marijuana Business
21 and Cultivation Facility or Grow Site. For the purpose of this Section,
22 all of the square feet of improvements owned, rented, leased or
23 otherwise occupied or used by a Marijuana Business within the City
24 shall be cumulated.

25 5. All Marijuana Businesses or Marijuana
26 Cultivation Facilities shall pay a minimum tax of One Thousand
27 Dollars (\$1,000.00) annually.

28 C. Modification, Repeal or Amendment.

1 The City Council may repeal the ordinance codified in this
2 Section, or amend it in a manner which does not result in an increase in
3 the tax or taxes imposed herein, without further voter approval. If the City
4 Council repeals said ordinance or any provision of this Section, it may
5 subsequently reenact it without voter approval, as long as the reenacted
6 ordinance or section does not result in an increase in the tax or taxes
7 imposed herein.

8 D. Administration.

9 The City Manager, or designee, and/or the City Council by
10 ordinance, may promulgate regulations to implement and administer this
11 Section including, but not limited to regulations allowing Marijuana
12 Businesses to remit taxes less frequently than monthly.

13 E. Annual Adjustment.

14 The taxes imposed by this Section shall be adjusted
15 annually by the Director of Financial Management. Beginning on July 1,
16 2016, and on July 1 of each succeeding year thereafter, the amount of
17 each tax imposed by this Section shall be adjusted equivalent to the most
18 recent change in the annual average of the Consumer Price Index (CPI)
19 for all urban consumers in the Los Angeles-Riverside-Orange County
20 areas as published by the United States Government Bureau of Labor
21 Statistics; however no adjustment shall decrease any tax imposed by this
22 Section. For the purposes of calculating the annual adjustment factor
23 under this Section, the base year shall be that year ending with December
24 31, 2014. Rates shall next be adjusted on July 1, 2016, and annually
25 thereafter, based on the annually calculated change from the base year.
26 The July 1, 2016 adjustment shall be the change in the average CPI for
27 the year ending December 31, 2015.

28 F. Reporting and Remittance.

1 In order to aid in the City's collection of taxes due under this
2 section and to ensure that all Marijuana Businesses and Cultivation Sites
3 are taxed consistently to the best of the City's ability, beginning as set
4 forth in Section K, below, and monthly thereafter, each Marijuana
5 Business shall report to the City any Gross Receipts received during the
6 reporting period and shall likewise remit to the City the taxes due and
7 owing during said period. For purposes of this Section, taxes shall begin
8 to accrue on the date that a person or entity first receives a business
9 license or other permit to operate as a Marijuana Business or Cultivation
10 Site. Square Footage payments shall be made annually at the beginning
11 of the calendar year and should be based on the most recent County
12 Assessors records, pro-rated based on the number of months of
13 operation.

14 G. Delinquent date-Penalty.

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

26 H. Records Inspection.

27 Whenever it is necessary to examine any books or records,
28 including tax returns, of any Marijuana Business or Cultivation Site in the

1 City to ascertain the amount of any tax due pursuant to this Section, the
2 City shall have the power and authority to examine such necessary books
3 and records at any reasonable time including, but not limited to, during
4 normal business hours. Records must be maintained for no less than
5 seven (7) years.

6 I. Suspension, Revocation and Appeal.

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

11 J. Application of Provisions.

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

20 K. Operative Date.

21 This ordinance establishing a medical marijuana business
22 tax shall only become operative 1) if the City repeals section 5.89 of the
23 Long Beach Municipal Code (banning the sale of marijuana in the City of
24 Long Beach) and 2) if the City adopts a regulatory scheme to permit
25 cultivation, dispensing or sale of medical marijuana. The tax shall become
26 effective on the effective date of the regulatory ordinance.

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OFFICE OF THE CITY ATTORNEY
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Section 2. If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this ordinance shall nonetheless remain in full force and effect. The people of the City of Long Beach hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

Section 3. As provided in Section 2001 of the Long Beach City Charter, if a majority of those electors voting on this ordinance vote in favor of same, it shall be adopted upon a declaration of the result of such ballot by the City Council, and it shall take effect ten (10) days after that date, or the effective date of the regulatory ordinance, whichever is later.

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