

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

RESOLUTION NO. RES-14-0005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH ORDERING, CALLING AND PROVIDING FOR AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD APRIL 8, 2014 FOR THE PURPOSE OF SUBMITTING ONE (1) BALLOT PROPOSITION TO THE QUALIFIED ELECTORS OF THE CITY OF LONG BEACH

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

Section 1. Under the provisions of the Constitution and laws of the State of California and the Charter of the City of Long Beach, a Special Municipal Election is ordered, proclaimed and called to be held in the City of Long Beach between the hours of 7:00 a.m. and 8:00 p.m. on Tuesday, the 8th day of April, 2014, for the purpose of submitting to a vote of the qualified electors of the City of Long Beach the following proposition which, for identification purposes only, is marked as Proposition X.

Proposition X. Long Beach Marijuana General Tax Measure.

To protect public safety services such as 911 emergency response, police and fire, as well as essential quality of life programs like parks, libraries, public works and infrastructure, shall the City of Long Beach impose a general tax initially set at six percent (6%) of annual gross receipts, but not to exceed ten percent (10%) of annual gross receipts, on medical marijuana businesses if legalized, with a tax on cultivation sites initially set at fifteen dollars (\$15) per square foot annually, but not to exceed fifty dollars (\$50) per square foot annually, with an annual CPI adjustment?

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

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

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

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

I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of January 7, 2014, by the following vote:

Ayes: Councilmembers: Lowenthal, DeLong, O'Donnell,
Andrews, Johnson, Austin, Neal,
Garcia.

Noes: Councilmembers: Schipske.

Absent: Councilmembers: None.


City Clerk

EXHIBIT "A"

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ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LONG BEACH,
CALIFORNIA AMENDING THE LONG BEACH MUNICIPAL
CODE BY ADDING SECTION 3.80.261 RELATING TO A
MARIJUANA BUSINESS LICENSE GENERAL TAX

THE PEOPLE OF THE CITY OF LONG BEACH DO ORDAIN AS
FOLLOWS:

Section 1. The Long Beach Municipal Code is amended by adding
Section 3.80.261 to read as follows:

3.80.261 Marijuana Businesses.

A. Annual Business License Tax.

1. Every Marijuana Business whether it is a “not for
profit,” a “non-profit,” or a “Non-Profit Organization,” as defined in this
Section, or a for-profit business, shall pay an annual business
license tax in accordance with Chapter 3.80 of this Code and the
Sections and Subsections hereunder.

2. For the purposes of this Section, a Marijuana
Business and a Marijuana Cultivation Facility are each considered to
be a business as that term is defined in Long Beach Municipal Code
3.80.133.

3. For the purposes of this Section, a Marijuana
Business and a Marijuana Cultivation Facility are not considered to
be a religious or charitable organization as defined in Section
3.80.320 (Exemption – Religious and charitable organizations).

4. For the purposes of this Section, “Marijuana
Business” shall mean any activity that involves, but is not limited to

1 planting, cultivating, harvesting, transporting, dispensing, delivering,
2 selling at retail or wholesale, manufacturing, compounding,
3 converting, processing, preparing, storing, packaging or testing, any
4 part of the plant cannabis sativa L, or any of its derivatives.

5 5. For the purposes of this Section, a not for profit,
6 a non-profit, or a "Non-Profit Organization" shall mean any
7 association, corporation or other entity that is exempt from taxation
8 measured by income or gross receipts under Article XIII, Section 26
9 of the California Constitution.

10 6. For the purposes of this Section, "Gross
11 Receipts" shall mean any transfer of title or possession, exchange or
12 barter, conditional or otherwise, in any manner or by any means
13 whatsoever, of tangible personal property for a consideration
14 including any monetary consideration for marijuana whatsoever,
15 including, but not limited to, membership dues, reimbursements or
16 the total amount, in any calendar year of cash or in-kind
17 contributions, including all operating costs related to the growth,
18 cultivation or provision of marijuana or any transaction related
19 thereto. The term "Gross Receipts" shall also include the total
20 amount, in any calendar year, of the sale price of all sales, the total
21 amount charged or received for the performance of any act, service
22 or employment of whatever nature it may be, whether or not such
23 service, act or employment is done as a part of or in connection with
24 the sale of goods, wares, merchandise, for which a charge is made
25 or credit allowed, including all refunds, cash credits and properties of
26 any amount or nature, any amount for which credit is allowed by the
27 seller to the purchaser without any deduction therefrom, on account
28 of the cost of the property sold, the cost of materials used, the labor

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

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

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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 (10%) of Gross Receipts. The tax shall be initially set at a rate of six percent (6%). The tax under this Chapter shall not be increased on Marijuana Businesses unless and until the City Council by ordinance takes action, and the tax rate shall not exceed ten percent (10%) of Gross Receipts.

2. Notwithstanding the maximum tax rate of ten percent (10%) of Gross Receipts imposed under Subsection B.1.,

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

8 3. In addition to the foregoing, the owner, operator,
9 or lessee of any "Marijuana Business," "Cultivation Facility" or "Grow
10 Site" existing to supply marijuana to a Marijuana Business shall pay
11 a tax of up to fifty dollars (\$50.00) per Square Foot on all
12 improvements owned, rented, leased or otherwise occupied or used
13 by a Cultivation Facility or Grow Site. The tax shall initially be set at
14 a rate of fifteen dollars (\$15) per Square Foot. The City Council may
15 by ordinance increase any such tax rate from time to time, not to
16 exceed the maximum tax rate of fifty dollars (\$50) per Square Foot.

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

27 5. All Marijuana Businesses or Marijuana
28 Cultivation Facilities shall pay a minimum tax of one thousand dollars

1 (\$1,000.00) annually.

2 C. Modification, Repeal or Amendment.

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

10 D. Administration.

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

15 E. Annual Adjustment.

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

1 the year ending December 31, 2015.

2 F. Reporting and Remittance.

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

16 G. Delinquent date-Penalty.

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

28 H. Records Inspection.

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

8 I. Suspension, Revocation and Appeal.

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

13 J. Application of Provisions.

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

22 K. Operative Date.

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

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

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

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