

RESOLUTION NO. RES-10-0079

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH CALLING AN ELECTION TO BE
HELD NOVEMBER 2, 2010 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 A
MARIJUANA BUSINESS LICENSE GENERAL 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, adding Section 3.80.260 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, pursuant to Section 2(b) of California Constitution Article XIII C,

1 the City Council hereby unanimously declares the existence of an emergency in that
2 predicted deficits in the City's General Fund may greatly impact the City's financial ability
3 to provide essential municipal services without disruption, such that a special election is
4 necessary to address such risks and dangers before the next regularly scheduled
5 municipal election for members of the City Council on April 10, 2012;

6 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
7 follows:

8 Section 1. Under the provisions of the Constitution and laws of the State
9 of California and the Charter of the City of Long Beach, an election is ordered,
10 proclaimed and called to be held in the City of Long Beach, between the hours of 7:00
11 a.m., and 8:00 p.m., on Tuesday, the 2nd day of November, 2010, for the purpose of
12 submitting to a vote of the qualified electors of the City of Long Beach the following
13 proposition which, for identification purposes only, is marked as Proposition B.

14 Proposition B. Long Beach Marijuana General Tax Measure.

15 To protect public safety services such as 911 emergency response,
16 police and fire, as well as essential quality of life programs like parks,
17 libraries, public works and infrastructure, should the City of Long Beach
18 impose a 15% tax on recreational marijuana businesses if legalized, with a
19 \$25 tax on cultivation sites per square foot, with an annual CPI adjustment?
20

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

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

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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 August 3, 2010, by the following vote:

Ayes:	Councilmembers:	Garcia, Lowenthal, DeLong,
		O'Donnell, Schipske, Andrews,
		Gabelich, Neal.

Noes:	Councilmembers:	None.
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Absent:	Councilmembers:	Johnson.
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City Clerk

EXHIBIT A

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LONG BEACH,
CALIFORNIA AMENDING THE LONG BEACH MUNICIPAL
CODE BY ADDING SECTION 3.80.260 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
3.80.260 to read as follows:

3.80.260 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

1 Business" shall mean any activity that involves, but is not limited to
2 planting, cultivating, harvesting, transporting, dispensing, delivering,
3 selling at retail or wholesale, manufacturing, compounding, converting,
4 processing, preparing, storing, packaging or testing, any part of the plant
5 Cannabis sativa L, or any of its derivatives. It shall not include a medical
6 marijuana collective established in accordance with Chapter 5.87 of this
7 Code.

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

13 6. For the purposes of this Section, "Gross Receipts"
14 shall mean any transfer of title or possession, exchange or barter,
15 conditional or otherwise, in any manner or by any means whatsoever, of
16 tangible personal property for a consideration including any monetary
17 consideration for marijuana whatsoever, including, but not limited to,
18 membership dues, reimbursements or the total amount, in any calendar
19 year of cash or in-kind contributions, including all operating costs related
20 to the growth, cultivation or provision of marijuana or any transaction
21 related thereto. The term "Gross Receipts" shall also include the total
22 amount, in any calendar year, of the sale price of all sales, the total
23 amount charged or received for the performance of any act, service or
24 employment of whatever nature it may be, whether or not such service,
25 act or employment is done as a part of or in connection with the sale of
26 goods, wares, merchandise, for which a charge is made or credit allowed,
27 including all refunds, cash credits and properties of any amount or nature,
28 any amount for which credit is allowed by the seller to the purchaser

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

28 7. For the purposes of this Section, "Square foot" or

1 "Square footage" shall mean the sum of the gross horizontal areas of all
2 floors, including garages, carports, porches or similar structures, parking
3 structures, usable basement areas, cellars, hallways, or common areas
4 below the roof and within the outer surface of the main walls of buildings
5 (or the center lines of party walls separating such buildings or portions
6 thereof) or within the lines drawn parallel to and two feet within the roof
7 line of any building or portion thereof without walls (which includes square
8 footage of all porches), and including pedestrian walkways or corridors.

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

13 B. Business License tax rates for marijuana businesses and
14 cultivation facilities.

15 1. Every Marijuana Business shall pay One Hundred
16 Fifty Dollars (\$150.00) per thousand dollars of gross receipts as and for its
17 business license tax.

18 2. The owner, operator, or lessee of any "Marijuana
19 Business," "Cultivation Facility" or "Grow Site" existing to supply marijuana
20 to a Marijuana Business shall pay a tax of Twenty-five Dollars (\$25.00) per
21 square foot on all improvements owned, rented, leased or otherwise
22 occupied or used by a Cultivation Facility or Grow Site.

23 3. Notwithstanding Section 3.80.320 of this Code, there
24 is imposed on every Marijuana Business that is a not for profit, a non
25 profit, or Non-Profit Organization, including all of its ancillary locations,
26 regardless of the number of square feet it occupies, a tax of Ten Dollars
27 (\$10.00) per square foot on all business improvements occupied by that
28 Marijuana Business and Cultivation Facility or Grow Site. For the purpose

1 of this Section, all of the square feet of improvements owned, rented,
2 leased or otherwise occupied or used by a Marijuana Business within the
3 City shall be cumulated.

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

7 C. Modification, Repeal or Amendment.

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

15 D. Administration.

16 The City Manager, or designee, may promulgate regulations to
17 implement and administer this Section including, but not limited to
18 regulations allowing Marijuana Businesses to remit taxes less frequently
19 than monthly.

20 E. Annual Adjustment.

21 The taxes imposed by this Section shall be adjusted annually by
22 the Director of Financial Management. Beginning on July 1, 2012, and on
23 July 1 of each succeeding year thereafter, the amount of each tax
24 imposed by this Section shall be adjusted equivalent to the most recent
25 change in the annual average of the Consumer Price Index (CPI) for all
26 urban consumers in the Los Angeles-Riverside-Orange County areas as
27 published by the United States Government Bureau of Labor Statistics;
28 however no adjustment shall decrease any tax imposed by this Section.

1 For the purposes of calculating the annual adjustment factor under this
2 Section, the base year shall be that year ending with December 31, 2010.
3 Rates shall next be adjusted on July 1, 2012, and annually thereafter,
4 based on the annually calculated change from the base year. The July 1,
5 2012 adjustment shall be the change in the average CPI for the year
6 ending December 31, 2011.

7 F. Reporting and Remittance.

8 In order to aid in the City's collection of taxes due under this section
9 and to ensure that all Marijuana Businesses and Cultivation Sites are
10 taxed consistently to the best of the City's ability, beginning December 1,
11 2010 and monthly thereafter, each Marijuana Business shall report to the
12 City any Gross Receipts received during the reporting period and shall
13 likewise remit to the City the taxes due and owing during said period. For
14 purposes of this Section, taxes shall begin to accrue on the date that a
15 person or entity first receives a business license or other permit to operate
16 as a Marijuana Business or Cultivation Site. Square Footage payments
17 shall be made annually at the beginning of the calendar year and should
18 be based on the most recent County Assessors records.

19 G. Delinquent date-Penalty.

20 Any individual or entity who fails to pay the taxes required by this
21 section within thirty (30) days after the due date shall pay in addition to the
22 taxes a penalty for nonpayment in a sum equal to twenty-five percent
23 (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
25 each calendar month following the month of the imposition of the twenty
26 five percent (25%) penalty if the tax remains unpaid; up to a maximum of
27 one hundred percent (100%) of the tax payable on the due date. Receipt
28 of the tax payment in the office shall govern the determination of whether

1 the tax is delinquent. Postmarks will not be accepted as adequate proof of
2 a timely payment.

3 H. Records Inspection.

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

11 I. Suspension, Revocation and Appeal.

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

16
17 Section 2. If any section, sentence, clause, phrase, or portion of this
18 Ordinance is for any reason held to be invalid or unenforceable by a court of competent
19 jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this
20 ordinance shall nonetheless remain in full force and effect. The people of the City of Long
21 Beach hereby declare that they would have adopted each section, sentence, clause,
22 phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections,
23 sentences, clauses, phrases, or portions of this Ordinance be declared invalid or
24 unenforceable and, to that end, the provisions of this Ordinance are severable.

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