

**CITY OF SACRAMENTO
MEASURE C**

C "Marijuana Business Tax. To help preserve essential services like fire, police, and 911 emergency response, shall City of Sacramento's business operations tax be updated by taxing businesses engaged in medical marijuana transactions, and in commercial production and sale of marijuana if legalized by California voters, at maximum rates of 4% and 10%, respectively, of gross receipts, with City Council discretion to lower tax rates or raise tax rates to the maximums, and requiring independent audits?"

IMPARTIAL ANALYSIS OF MEASURE C

Prepared by Sacramento City Attorney

Measure C would enact an ordinance amending the City of Sacramento's existing Business Operations Tax to set new tax rates for "marijuana businesses." A marijuana business would be defined to include planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, providing, or selling marijuana, including medical marijuana "cooperatives" and "collectives" that are established as not-for-profit businesses.

Under the City's existing Business Operations Tax ordinance, marijuana businesses and most other businesses are taxed based on gross receipts, meaning a business's total revenue without deducting expenses. Under the existing ordinance, the tax rate for businesses with annual gross receipts of \$10,000 or less is a flat rate of \$30 each year, while the tax rate for businesses with annual gross receipts in excess of \$10,000 is \$30 each year, plus \$0.0004 for each additional dollar of gross receipts in excess of \$10,000. The annual tax liability under the City's existing ordinance is capped at \$5,000.

Measure C would remove this cap for marijuana businesses and establish new gross receipts tax rates for these businesses. For a marijuana business providing marijuana pursuant to the Compassionate Use Act of 1996 ("medical marijuana"), the tax rate would be a maximum of 4% of the business's annual gross receipts. For a marijuana business providing non-medical marijuana pursuant to the "Regulate, Control, and Tax Cannabis Act of 2010" (Proposition 19), if approved by California voters, the tax rate would be a maximum of 10% of the business's annual gross receipts. The City Council would have the discretion to lower or raise the tax rates from time to time, not to exceed the maximum tax rates of 4% for medical marijuana and 10% for non-medical marijuana.

The marijuana business tax proposed by Measure C is a general tax because the City could use the tax revenue for any legal municipal purpose. Measure C would require the City to perform annual independent audits to verify that tax revenues are properly expended.

A "yes" vote is in favor of amending Sacramento's existing Business Operations Tax to set the new tax rates for marijuana businesses. A "no" vote is against amending the ordinance, and would leave in effect the existing Business Operations Tax rate for marijuana businesses. A majority of "yes" votes is required for the ordinance to be enacted.

Eileen M. Teichert
City Attorney

FULL TEXT OF MEASURE C

AN ORDINANCE AMENDING SECTION 3.08.120, SECTION 3.08.170 AND ADDING SECTION 3.08.205 TO CHAPTER 3.08 TITLE 3 OF THE SACRAMENTO CITY CODE APPLYING THE BUSINESS OPERATIONS TAX TO MARIJUANA BUSINESSES AT A HIGHER TAX RATE

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

This ordinance amends section 3.08.120 and 3.08.170 of, and adds section 3.08.205 to, Chapter 3.08 Title 3 of the Sacramento City Code, and is made effective by voter approval of a business operations tax ballot measure.

SECTION 2

BACKGROUND

- A. Through the passage of Proposition 215 in 1996, the voters of California authorized the use of marijuana for medical purposes.
- B. Every person engaged in business activity in the City of Sacramento is required to obtain a business operations tax certificate and pay the City's business operations tax.
- C. The City's business operations tax is based, in part, on the type of business subject to the tax. Currently, medical marijuana businesses are taxed like most other businesses, based on gross receipts.
- D. Proposition 19, if approved by the voters at the November 2, 2010, General Election, will legalize the commercial sale, use, and possession of marijuana for other than medical use.
- E. In applying the business operations tax to marijuana businesses, the City Council is mindful of the fact that the economic burden of taxes imposed on businesses may be directly or indirectly passed on to their customers, in whole or in part. To help mitigate the economic burden that this tax may have on users of medical marijuana, it is the intent of the City Council to tax medical marijuana businesses at a lower rate than businesses that engage in the commercial sale of marijuana for nonmedical use.
- F. The City now desires to tax marijuana businesses as a specific category subject to a higher tax rate, and to give the City Council authority to implement lower rates as it deems appropriate.
- G. The ordinance will require annual financial audits of tax expenditures and will require voter approval of increases to the tax rates above the authorized maximum rates.
- H. Increasing the business operations tax requires voter approval.
- I. A measure that would give effect to this ordinance is proposed for placement on the November 2, 2010, ballot.
- J. The City depends upon the revenue generated by the business operations tax to continue providing essential City services supported by the City's general fund, such as police, fire protection, and emergency response.

SECTION 3

Section 3.08.120 of the Sacramento City Code is amended to read as follows:

3.08.120 Application for first certificate.

A person making application for the first certificate to be issued, or for a newly established business or for a new ownership of a previously established-business, shall furnish to the administrator a sworn statement, on a form provided by the administrator, setting forth the following information:

- A. The exact nature or kind of business for which a certificate is requested;
- B. The place where such business is to be carried on, and if the business is not to be carried on at any permanent place of business, the places of residence of the owners of the business;
- C. The fictitious name or names under which the business will be operated, if any, and the name of the person to whom the certificate is issued;
- D. Such further information as the administrator may deem necessary to enable him or her to issue the certificate applied for, including but not limited to gross receipts information for the current and prior years.

The administrator may also collect demographic information from each applicant.

This data shall be provided on a voluntary basis.

SECTION 4

Section 3.08.170 of the Sacramento City Code is amended to read as follows:

3.08.170 Gross receipts.

Every person not falling within the categories described in Sections 3.08.180, 3.08.190, 3.08.200, and 3.08.205 of this chapter shall pay an annual business operations tax as follows:

- A. Every person which has gross receipts of ten thousand dollars (\$10,000.00) or less shall pay a tax of thirty dollars (\$30.00) for each year.
- B. Every person which has gross receipts in excess of ten thousand dollars (\$10,000.00), shall pay a tax of thirty dollars (\$30.00) plus \$.0004 for each dollar of gross receipts in excess of ten thousand dollars (\$10,000.00) for the reporting period; provided, however, that the maximum annual tax liability for any person under this section shall be five thousand dollars (\$5,000.00).

SECTION 5

- A. This Section 5 shall become operative only if the "Regulate, Control, and Tax Cannabis Act of 2010," adding Article 5 of Chapter 5 of Division 10 of the Health and Safety Code (commencing with section 11300), is not approved by the voters in the General Election on November 2, 2010.
- B. Section 3.08.205 is added to Chapter 3.08 of the Sacramento City Code to read as follows:

3.08.205 Marijuana businesses.

- A. Every person engaged in a marijuana business shall pay an annual business operations tax as follows:
 - 1. On and after July 1, 2011, four percent (4%) of each dollar of gross receipts for the reporting period.
 - 2. Notwithstanding the tax rate imposed in subsection A.1, the City Council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may by resolution increase such tax rate from time to time, not to exceed the maximum rate established under subsection A.1.
- B. For purposes of this section, the following terms have the following meanings: "Gross receipts" has the meaning as defined in section 3.08.020, as it pertains to the marijuana business' reporting period, and includes receipts from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products, goods, or services sold or provided by the marijuana business.

"Marijuana" or "Cannabis" has the meaning as defined in California Health and Safety Code section 11018.

"Marijuana business" means a business activity including, but not

limited to, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, providing, or selling wholesale and/or retail sales of marijuana. A marijuana business includes any facility, building, structure or location, whether fixed, mobile, permanent or temporary, where marijuana is made available, sold, given, distributed, or otherwise provided in accordance with Health and Safety Code section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Health and Safety Code section 11362.7 et seq.). A marijuana business includes medical marijuana "cooperatives" and "collectives" that are established as not for profit businesses.

"Reporting period" means a year, quarter or calendar month, as determined by the administrator.

- C. The provisions of section 3.08.210 do not apply to any marijuana business.

SECTION 6

- A. This Section 6 shall become operative only if the "Regulate, Control, and Tax Cannabis Act of 2010," adding Article 5 of Chapter 5 of Division 10 of the Health and Safety Code (commencing with section 11300), is approved by the voters and becomes effective on or before July 1, 2011.

- B. Section 3.08.205 is added to Chapter 3.08 of the Sacramento City Code to read as follows:

3.08.205 Marijuana businesses.

- A. Every person engaged in a marijuana business under Health and Safety Code section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Health and Safety Code section 11362.7 et seq.) shall pay an annual business operations tax as follows:
 - 1. On and after July 1, 2011, four percent (4%) of each dollar of gross receipts for the reporting period.
 - 2. Notwithstanding the tax rate imposed in subsection A.1, the City Council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may by resolution increase such tax rate from time to time, not to exceed the maximum tax rate established under subsection A.1.
- B. Every person engaged in a marijuana business pursuant to the "Regulate, Control, and Tax Cannabis Act of 2010," Adding Article 5 of Chapter 5 of Division 10 of the Health and Safety Code (commencing with section 11300), shall pay an annual business operations tax as follows:
 - 1. On and after July 1, 2011, ten percent (10%) of each dollar of gross receipts for the reporting period.
 - 2. Notwithstanding the tax rate imposed in subsection 8.1, the City Council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may by resolution increase such tax rate from time to time, not to exceed the maximum tax rate established under subsection 8.1.
- C. For purposes of this section, the following terms have the following meanings: "Gross receipts" has the meaning as defined in section 3.08.020, as it pertains to the marijuana business' reporting period, and includes receipts from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products, goods, or services sold or provided by the marijuana business. "Marijuana" or "Cannabis" has the meaning as defined in California Health and Safety Code section 11018. "Marijuana business" means a business activity including, but not limited to, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, providing, or selling wholesale and/or retail sales of marijuana. A marijuana business includes any facility, building, structure or location, whether

fixed, mobile, permanent or temporary, where marijuana is made available, sold, given, distributed, or otherwise provided in accordance with Health and Safety Code section 11362.5 and Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Health and Safety Code section 11362.7 et seq.), or Article 5 of Chapter 5 of Division 10 of the Health and Safety Code (commencing with section 11300). A marijuana business includes medical marijuana "cooperatives" and "collectives" that are established as not for profit businesses. "Reporting period" means a year, quarter or calendar month, as determined by the Administrator.

D. The provisions of section 3.08.210 do not apply to any marijuana business.

SECTION 7

Amendment or Repeal. The maximum business operations tax imposed by this ordinance may be decreased, repealed, or amended by the City Council, but may not be exceeded without a vote of the people as required in California Constitution Article XIII C and California Government Code section 53750(h).

SECTION 8

Audit of business operations tax. The City shall annually audit the business operations taxes imposed by this ordinance to verify that tax revenues have been properly expended in accordance with the law. The annual audit shall be performed under the direction of the Director of Finance by a qualified independent third party employing reasonable, cost-effective procedures.

SECTION 9

Severability. If any portion of this ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this ordinance shall remain in effect. The people of the City of Sacramento hereby declare that they would have adopted each portion of this ordinance, notwithstanding the fact that anyone or more portions of this ordinance is declared invalid or unenforceable and, to that end, the provisions of this ordinance are severable.

SECTION 10

Majority Approval; Effective Date. This ordinance shall be effective only if approved by a majority of the voters voting on this ordinance and shall go into effect on July 1, 2011.

ARGUMENT IN FAVOR OF MEASURE C

The national recession is crippling local governments everywhere, and the City of Sacramento is no exception. This year, the City closed a \$43 million budget gap; next year, the gap will be at least \$25 million. If the State of California continues to raid funding earmarked for cities, the City's deficit will grow larger. We have eliminated non-essential services, cut back critical services wherever possible, laid off employees, and pared budgets to the bone. Some of our City Departments, including City Code Enforcement, have had their budgets slashed by over 50%. Soon, we'll be forced to scale back other vital functions, including public safety.

We have held the line against increasing taxes on local businesses, because they are already struggling to stay afloat. We have resisted efforts to place a parcel tax on the ballot when so many Sacramentans are fighting to save their homes. We believe that the City needs new revenue sources. That's why we are supporting Measure C. This measure will extend the City's Business Operations Tax to Medical Marijuana Dispensaries at the rate of up to four percent.

In 1996, some 60 percent of Sacramento voters approved the Compassionate Use Act to allow for the cultivation and sale of medical marijuana. Since then, medical marijuana has been sold in the City to patients who qualify. While most medical marijuana dispensaries pay sales taxes, so far they have not paid the same tax rates that similar businesses are required to pay in other cities. The City of Sacramento needs this new revenue to keep provid-

ing the services you depend upon. Vote yes on Measure C.

s/Jaymes Butler, Vice President
Sacramento Area Fire Fighters

s/Mark A. Tyndale, Vice President
Sacramento Police Officers Association

s/Russell Fehr
City Treasurer

NO ARGUMENT AGAINST MEASURE C WAS FILED

**NO REBUTTAL TO ARGUMENT IN FAVOR OF
MEASURE C WAS FILED**