

MEETING DATE: 06/28/2022 (27)

ORDINANCE NO. 10801 (N.S.)

**AN ORDINANCE OF THE COUNTY OF SAN DIEGO, CALIFORNIA
ADDING CHAPTER 4 (CANNABIS BUSINESS TAX) TO TITLE 2,
DIVISION 2, OF THE SAN DIEGO COUNTY CODE OF REGULATORY
ORDINANCES ESTABLISHING A TAX ON CANNABIS BUSINESS
ACTIVITIES WITHIN THE COUNTY**

THE PEOPLE OF THE COUNTY OF SAN DIEGO DO ORDAIN AS FOLLOWS:

SECTION 1. CODE AMENDMENT. Chapter 4 is added to Title 2, Division 2, of the San Diego County Code of Regulatory Ordinances to read as follows:

CHAPTER 4. CANNABIS BUSINESS TAX

22.401 TITLE.

This ordinance shall be known as the Cannabis Business Tax Ordinance. This ordinance shall be applicable in the unincorporated area of San Diego County, which shall be referred to herein as "County."

22.402 AUTHORITY AND PURPOSE.

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 7284, 7284.4, and 34021.5 of the Revenue and Taxation Code, upon cannabis businesses that engage in business in the unincorporated area of the County. The Cannabis Business Tax is levied based upon business gross receipts except for commercial cannabis cultivation which shall be taxed on square footage or gross receipts. It is not a sales and use tax, a tax upon income, or a tax upon real property and shall not be calculated or assessed as such. The Cannabis Business Tax shall not be separately identified or otherwise specifically assessed or charged to any member, customer, patient, or caretaker. The Cannabis Business Tax is a general tax enacted solely for general governmental purposes of the County and not for specific purposes. All of the proceeds from the tax imposed by this chapter shall be placed in the County's general fund and be available for any lawful county purpose.

22.403 INTENT.

The intent of this Ordinance is to levy a tax on all cannabis businesses that operate in the unincorporated area of the County, regardless of whether such business would have been legal at the time this chapter was adopted. Nothing in this chapter shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

22.404 DEFINITIONS.

The following words and phrases shall have the meanings set forth below when used in this chapter:

A. An "arm's length transaction" is a sale entered into in good faith and for valuable consideration at a sales price that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction.

B. "Business" shall include all activities engaged in or caused to be engaged in within the unincorporated area of the County, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

C. "Calendar year" means January 1 through December 31, of the same year.

D. "Cannabis" means 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" shall not include "industrial hemp," unless otherwise specified.

E. "Cannabis product" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. "Cannabis product" also means cannabis products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medicinal cannabis products.

F. "Canopy" means all areas occupied by any portion of a cannabis plant whether contiguous or noncontiguous on any one site. When plants occupy multiple horizontal planes (as when plants are placed on shelving above other plants) each plane shall be counted as a separate canopy area.

G. "Cannabis business" means any business activity involving cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing, and wholesaling of cannabis, cannabis products, or of ancillary products and accessories, whether or not carried on for gain or profit.

H. "Cannabis business tax" means the tax due pursuant to this chapter for engaging in a cannabis business in the unincorporated area of the County.

I. "Commercial cannabis cultivation" means cultivation of cannabis undertaken in the course of conducting a cannabis business.

J. "Commercial cannabis permit" means a permit, license, certificate, or other approval issued by the County to a person to authorize that person to operate a cannabis business or engage in business as a cannabis business within the unincorporated area of the County.

K. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis and includes, but is not limited to, the operation of a nursery.

L. "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager, or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

M. "Engaged in business as a cannabis business" means the commencing, conducting, operating, managing, or carrying on of a cannabis business, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the unincorporated area of the County or coming into the unincorporated area of the County from an outside location to engage in such activities. A person shall be deemed engaged in business within the unincorporated area of the County if:

1. Such person or person's employee maintains a fixed place of business within the unincorporated area of the County for the benefit or partial benefit of such person;
2. Such person or person's employee owns or leases real property within the unincorporated area of the County for business purposes;
3. Such person or person's employee regularly maintains a stock of tangible personal property in the unincorporated area of the County for sale in the ordinary course of business;
4. Such person or person's employee regularly conducts solicitation of business within the unincorporated area of the County; or
5. Such person or person's employee performs work or renders services in the unincorporated area of the County.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in business."

N. "Evidence of doing business" means evidence such as, without limitation, use of signs, circulars, cards, or any other advertising media, including the use of internet or telephone

solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the unincorporated area of the County.

O. "Gross Receipts," except as otherwise specifically provided, means, whether designated as a sales price, royalty, rent, membership fee, ATM service fee, delivery fee, slotting fee, any other fee, vaping room service charge, commission, dividend, or other designation, the total amount (including all receipts, cash, credits, services and property of any kind or nature) received or payable for sales of goods, wares or merchandise, or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. In the event the business is involved in a "non-arm's length transaction" the gross receipts will be subject to the fair market value using a methodology approved by the Tax Administrator. However, the following shall be excluded from Gross Receipts:

1. Cash discounts were allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
5. Cash value of sales, trades or transactions between departments or units of the same business located in the unincorporated area of the County of San Diego and if authorized by the Tax Administrator in writing in accordance with Section 22.414 (B);
6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected, they shall be included in the amount of gross receipts for the period when they are recovered;
7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded;
8. Amounts collected for others where the business is acting as an agent or

trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the Tax Administrator with the names and the addresses of the others, and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees;

9. Retail sales of non-cannabis products, such as t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 22.414 shall not be subject to the cannabis business tax under this chapter.

10. Payments made by the tax-reporting cannabis business (Seller) to a cannabis business (Buyer) for the difference in the original acquisition price and subsequent renegotiated or finalized selling price of products or services sold to a specific end customer. This type of transaction is referred to as a "Billback." The tax-reporting cannabis business must provide supporting documentation to substantiate the transaction in order to be eligible for an exemption.

P. "Industrial hemp" means a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom. However, should the federal or state legislative body increase or decrease the percentage of THC then this new limit shall be applicable.

Q. "Lighting" means a source of light that is primarily used for promoting the biological process of plant growth. Lighting does not include sources of light that primarily exist for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via small skylights, windows, or ventilation openings.

R. "Medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, intended to be sold or sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, for a medicinal cannabis patient in California who possesses a physician's recommendation, or a cannabis card issued pursuant to Health and Safety Code Section 11362.71.

S. "Nursery" means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

T. A "non-arm's length transaction" is a transaction that does not meet the definition of an "arm's length transaction." In other words, the transaction is not a sale that is entered into in good faith and that reflects fair market value in the open market. One example of a non-arm's

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length transaction would be when a cultivator sells cannabis goods to a cannabis distributor at a sales price that is lower than what the same cultivator would to other cannabis distributors, or which does not reflect the fair market value in the open market.

U. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, other legal entity, or any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

V. "Processing" means a cultivation site that conducts only trimming, drying, curing, grading, packaging, or labeling of cannabis, and nonmanufactured cannabis products.

W. "Retailer" means a person as defined in Section 22.404(U) who sells cannabis or cannabis products at their place of business or by delivery to an end user or customer for use or consumption rather than to another person or business for resale.

X. "Sale" "Sell" and "to sell" means and includes any sale, exchange, or barter either as a retailer or wholesaler by a person as defined by Section 22.404(U). It shall also mean any transaction whereby, for any consideration, title to cannabis, cannabis products, are transferred from one person to another and includes the delivery of cannabis, cannabis products, pursuant to an order placed for the purchase of the same, but does not include the return of cannabis, cannabis products to the licensee from whom the cannabis, cannabis product was purchased.

Y. "State" means the State of California.

Z. "State license," "license," or "registration" means a state license issued pursuant to California Business & Professions Code Section 26050, and all other applicable state laws, required for operating a cannabis business.

AA. "Tax Administrator" means the Treasurer-Tax Collector of the County of San Diego or his or her designee.

AB. "Testing Laboratory" means a cannabis business that (i) offers or performs tests of cannabis, cannabis products, (ii) offers no service other than such tests, (iii) sells no products, excepting only testing supplies and materials, (iv) is accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state and (v) is registered with the Department of Cannabis Control or other state agency.

22.405 TAX IMPOSED.

A. Beginning January 1, 2023, there is imposed upon each person who is engaged in business as a cannabis business a cannabis business tax. Such tax is payable regardless of whether the person has been issued a commercial cannabis permit to operate lawfully in the unincorporated area of the County or is operating unlawfully. The County's acceptance of a cannabis business tax payment from a

cannabis business operating illegally shall not constitute the County’s approval or consent to such illegal operations.

B. The County Board of Supervisors may, by resolution or ordinance, increase or decrease the rate of the cannabis business tax, including the initial rate of cannabis business tax. The County Board of Supervisors may, by resolution or ordinance, increase or decrease the rate of the medicinal cannabis business tax, including the initial rate of the medicinal cannabis business tax, independent of other cannabis business tax activities. The County Board of Supervisors may set varied rates using classifications, sub-classifications, a tiered rate structure, graduated rates, or any other means not prohibited by law. Notwithstanding the foregoing, in no event shall the County Board of Supervisors repeal this tax or set any adjusted rate that exceeds the maximum rates calculated pursuant to this chapter.

C. The maximum rate of the cannabis business tax shall be calculated as follows:

1. For every person engaged in commercial cannabis cultivation in the unincorporated area of the County, the person shall be subject to an annual commercial cannabis business tax at the rates specified below in Section 22.405(C)(1)(a) or shall be subject to the annual maximum tax rate not to exceed three percent (3%) of gross receipts.

a. Through January 1, 2024, the annual maximum rate shall be:

- i. Ten dollars (\$10.00) per square foot of canopy space in a facility that uses exclusively artificial lighting.
- ii. Seven dollars (\$7.00) per square foot of canopy space in a facility that uses a combination of natural and supplemental lighting as defined in Section 22.404(Q) of this chapter.
- iii. Four dollars (\$4.00) per square foot of canopy space in a facility that uses no artificial lighting.
- iv. Two dollars (\$2.00) per square foot of canopy space for any nursery.

b. On January 1, 2024 and on each January 1, thereafter, the maximum annual tax rates specified in Section 22.405(C)(1)(a), shall increase by the percentage increase in the Consumer Price Index (“CPI”) for consumers in the San Diego Metropolitan Area as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed shall be made.

2. For every person engaged in the operation of a testing laboratory for cannabis, cannabis products, the person shall be subject to the maximum tax rate not to exceed two percent (2%) of gross receipts.

3. For every person engaged in retail sales of cannabis, cannabis products, including as a retailer (dispensary) or non-storefront retailer (retail delivery business), or microbusiness, the person shall be subject to the maximum tax rate not to exceed six percent (6%) of gross receipts.

4. For every person engaged in distribution of cannabis, cannabis products, the person shall be subject to the maximum tax rate not to exceed three percent (3%) of gross receipts.

5. For every person engaged in manufacturing or processing of cannabis, cannabis products, or any other type of cannabis business not described in Section 22.405 (C)(1), (2), (3), or (4) the person shall be subject to the maximum tax rate not to exceed four percent (4%) of gross receipts.

D. Persons subject to the cannabis business tax shall register with the County and if applicable pay the registration fee adopted by resolution or ordinance by the County Board of Supervisors pursuant to Section 22.406.

22.406 REGISTRATION, REPORTING AND REMITTANCE OF TAX.

A. Registration of Cannabis Business. All cannabis businesses shall be required to annually register as follows:

1. All persons engaging in business as a cannabis business, whether an existing, newly established or acquired business shall register with the Tax Administrator within thirty (30) calendar days of commencing operation and shall annually renew such registration within thirty (30) calendar days of the business registration anniversary date of each year thereafter. In registering, such persons shall furnish to the Tax Administrator a sworn statement, upon a form prescribed by the Tax Administrator, setting forth the following information:

- i. The name of the business
- ii. The names and addresses of each owner
- iii. The exact nature or kind of business
- iv. The place where such business is to be carried on; and
- v. Any additional information which the Tax Administrator may require.

- B. An annual registration fee in accordance with the current and approved County fee schedule shall be presented with the sworn statement submitted under this chapter. This fee shall not be considered a tax and may be adjusted annually by resolution or ordinance of the County Board of Supervisors.
- C. The cannabis business tax imposed by this chapter shall be paid, in arrears, on a quarterly basis. Each person owing a cannabis business tax shall on or before the last day of the month following the close of each calendar quarter file with the Tax Administrator a statement (“tax statement”) of the tax owed for that calendar quarter and the basis for calculating that tax. The Tax Administrator may require that the tax statement be submitted on a form prescribed by the Tax Administrator. The tax for each calendar quarter shall be due and payable on the same date that the tax statement is due.
- D. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar quarters up through the calendar quarter during which cessation occurred.
- E. In the event that there is a change in ownership of any cannabis business:
 - 1. The new owner is required to submit an updated registration form to the Tax Administrator;
 - 2. The new owner is subject to an audit by the Tax Administrator; and
 - 3. Unless otherwise provided by law, it is the joint and several liability of both the seller and buyer to remit any taxes, interest, penalties, and fees due up until the date of sale; otherwise, a certificate of lien may be recorded against both the seller and/or buyer in an amount to be determined by the Tax Administrator.
- F. The Tax Administrator may, at his or her discretion, establish alternative reporting and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure effective collection of the cannabis business tax. The Tax Administrator may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The Tax Administrator may require that a taxpayer make payments via a cashier’s check, money order, wire transfer, or similar instrument.

22.407 PAYMENTS AND COMMUNICATIONS – TIMELY REMITTANCE.

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Whenever any payment, statement, report, request, or other communication is due, it must be received by the Tax Administrator on or before the due date. A postmark will not be accepted as timely remittance. If the due date would fall on a Saturday, Sunday or a holiday observed by the County, the due date shall be the next regular business day on which the County is open to the public.

22.408 PAYMENT – WHEN TAXES DEEMED DELINQUENT.

Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 22.406 and 22.407.

22.409 NOTICE NOT REQUIRED BY THE COUNTY.

The County may as a courtesy send a tax notice to the cannabis business which owes the County a cannabis business tax. However, the Tax Administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

22.410 PENALTIES AND INTEREST.

A. Any person who fails or refuses to pay any cannabis business tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to ten percent (10%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one percent (1%) per month.

2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax, plus interest at the rate of one percent (1%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one percent (1%) per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a cannabis business tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any fees, penalties, and interest as provided for in this chapter, and any other amount allowed under state law.

C. The Tax Administrator may waive the penalties imposed upon any person under this Section 22.410 if:

1. The person requests a waiver of penalties by submitting a written request for waiver to the Tax Administrator no later than December 31 of the second calendar year following the calendar year in which the tax became delinquent; and

2. The person provides evidence satisfactory to the Tax Administrator that the failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect; and the person paid the delinquent taxes, penalties, accrued interest, and fees owed prior to applying to the Tax Administrator for a waiver.

D. The waiver provisions specified in Section 22.410(C) shall not apply to interest accrued on the delinquent taxes and a waiver shall be granted only once during any twenty-four month period. The Tax Administrator’s decision on a request for a waiver of penalties is final and conclusive and not subject to appeal under Section 22.425.

22.411 REFUNDS AND CREDITS.

A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in Section 22.412.

B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of a business.

22.412 REFUNDS AND PROCEDURES.

A. Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the County under this chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund signed under penalty of perjury is filed with the Tax Administrator within one (1) year of the date the tax was originally due or paid, whichever came first. The claim shall be filed on a form available from the Tax Administrator. A person may only file a claim for refund if the person paid the tax. No person shall be entitled to a refund unless the person can support the claim by written records sufficient to show entitlement thereto. The Tax Administrator's decision on a claim for refund is final and conclusive and not subject to appeal under Section 22.425.

B. The Tax Administrator, his or her designee which may include a third party, or any other County officer charged with the administration of this chapter shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after requested by the Tax Administrator to do so. The Tax Administrator may collect a fee adopted by the County Board of Supervisors to pay for the cost of examination and audit should the books

and records be provided in a form insufficient to allow the Tax Administrator to make a determination on the claim for refund.

C. In the event that the cannabis business tax was erroneously paid in an amount in excess of the tax due, and the error is attributable to the County, the County shall refund the amount of tax erroneously paid; provided that (i) a claim for refund has been timely filed with the Tax Administrator; and (ii) the refund cannot exceed, under any circumstance, the amount of tax overpaid during the twelve months preceding the last month for which the claim states the tax was overpaid.

22.413 PERSONAL CULTIVATION NOT TAXED.

The provisions of this chapter shall not apply to personal cannabis cultivation or personal use of cannabis, to the extent those activities are authorized in the "Medicinal and Adult Use Cannabis Regulation and Safety Act," as may be amended. This chapter shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and provided that the individual receives no compensation whatsoever related to that personal cultivation or use.

22.414 ADMINISTRATION OF THE TAX.

A. It shall be the duty of the Tax Administrator to collect the taxes, interest, penalties, fees, and perform the duties required by this chapter.

B. For purposes of administration and enforcement of this chapter generally, the Tax Administrator may from time to time promulgate such administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Tax Administrator may take such administrative actions as needed to administer the cannabis business tax, including but not limited to:

1. Provide to all cannabis business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this chapter;
3. Receive and record all taxes remitted to the County as provided in this chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this chapter;
5. Assess penalties and interest to taxpayers pursuant to this chapter;
6. Determine amounts owed under and enforce collection pursuant to this chapter.

22.415 ENFORCEMENT.

A. Any taxes, interest, penalties, and/or fees required to be paid under the provisions of this chapter shall be deemed a debt owed to the County. Any person owing money to the County under the provisions of this chapter shall be liable in an action brought in the name of the County for the recovery of such debt. The provisions of this chapter shall not be deemed a limitation upon the right of the County to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax, interest, penalties, and/or fees imposed by this chapter or the failure to comply with any of the provisions of this chapter.

B. In addition to any other remedies available under federal, state, or local law, if any amount required to be paid to the County under this chapter is not paid when due, the Tax Administrator may, within three (3) years after the amount is due record with any county recorder in the State of California a certificate of lien specifying the amount of taxes, interest, penalties, and fees due, and the name and address of the person as it appears on the records of the Tax Administrator. The lien shall also specify that the Tax Administrator has complied with all provisions of this chapter in the determination of the amount required to be paid. Such certificate of lien shall be recorded in accordance with applicable law in the jurisdiction in which the certificate is recorded. From the time of the filing for record, the amount required to be paid, together with penalties and interest thereon, constitutes a lien upon all real property in the county where the certificate is recorded owed by the person, or subsequently acquired by the person before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten (10) years from the recording of the certificate unless sooner released or otherwise discharged. A fee may be adopted by the County Board of Supervisors and collected by the Tax Administrator to pay for the cost of recording and administering the lien.

C. At any time within ten (10) years after the Tax Administrator has recorded a certificate of lien under this Section 22.415, the Tax Administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this chapter. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy and sale pursuant to a writ of execution. The Tax Administrator may pay or advance to the sheriff or marshal, the same fees, commissions and expenses for services provided by law for similar services pursuant to a writ of execution.

D. In lieu of issuing a warrant under this Section 22.415, at any time within three (3) years after any amount required to be paid to the County under this chapter is not paid when due or a certificate of lien was recorded under this Section 22.415, the Tax Administrator may collect the amount due by seizing any asset or property, real or personal (including a bank account), of the person and sell at public auction the asset or property, or a sufficient part of it to pay the amount due together with any penalties, interest, and fees imposed for the delinquency and any cost incurred on account of the seizure and sale. Any seizure made shall be only of property of the person owing the cannabis business tax not exempt from execution under the provisions of the Code of Civil Procedure.

22.416 APPORTIONMENT.

If a person subject to the tax is operating both within the unincorporated area of the County and outside the unincorporated area of the County, it is the intent of the County to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the unincorporated area of the County. To the extent federal or state law requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The Tax Administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

22.417 CONSTITUTIONALITY AND LEGALITY.

This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law. If a person believes that the tax, as applied to him or her, is impermissible under applicable law, he or she may request that the Tax Administrator release him or her from the obligation to pay the impermissible portion of the tax.

22.418 AUDIT AND EXAMINATION OF PREMISES AND RECORDS.

A. For the purpose of ascertaining the amount of cannabis business tax owed or verifying any representations made by any taxpayer to the County in support of his or her tax calculation, the Tax Administrator or his/her designees which may include a third party shall have the power to inspect any location where commercial cannabis activity occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, access to METRC data, and/or point-of-sale data, state and/or federal income tax returns, excise tax returns, and other records relating to the gross receipts of the business) of persons engaged in cannabis businesses. In conducting such investigation, the Tax Administrator, or his/her designees which may include a third party shall have the power to inspect any space utilized for cannabis related activities, as well as any equipment or software, such as computers, software systems, platforms, and databases (including METRC), and/or point of sale systems, to include any keys or access codes for access to and use of the equipment and/or software, that may contain such records.

B. It shall be the duty of every person liable for the collection and payment to the County of any tax imposed by this chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the County, which records the Tax Administrator or his/her designee which may include a third party shall have the right to inspect at all reasonable times.

22.419 OTHER LICENSES, PERMITS, TAXES, FEES OR CHARGES.

A. Nothing contained in this chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any commercial cannabis permit, County license, permit, or other certificate required by, under or by virtue of any provision of any other chapter of this code or any other ordinance or resolution of the County, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required under any other chapter of this code or any other ordinance or resolution of the County. Any references made or contained in any other chapter of this code to any licenses, permits, or certificates, or license, permit, or certificate taxes, fees, or charges, or to any schedule of license, permit, or certificate fees, shall be deemed to refer to the licenses, permits or certificates, and their respective taxes, fees or charges, or schedule of fees, provided for in other chapters of this code.

B. A commercial cannabis permit issued under the San Diego County Code of Regulatory Ordinances may be revoked, suspended or not renewed in the event that the person holding that permit has failed to: (i) register or renew such registration pursuant to Section 22.406, (ii) make a deposit required by the Tax Administrator pursuant to Section 22.406, or (iii) timely pay all taxes, interest, penalties, and fees owed.

22.420 PAYMENT OF TAX DOES NOT AUTHORIZE UNLAWFUL BUSINESS.

A. The payment of a cannabis business tax required by this chapter, and its acceptance by the County, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this code and all other applicable County and state laws.

B. No tax paid under the provisions of this chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law.

22.421 DEFICIENCY DETERMINATIONS.

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a cannabis business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such cannabis business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Sections 22.422 and 22.423.

22.422 FAILURE TO REPORT – NONPAYMENT, FRAUD.

A. Under any of the following circumstances, the Tax Administrator may make and give notice of an assessment of the amount of tax owed by a person under this chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this chapter;
2. If the person has not paid the tax due under the provisions of this chapter;
3. If the person has not, after demand by the Tax Administrator, filed a corrected statement, or furnished to the Tax Administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this chapter; or
4. If the Tax Administrator determines that the nonpayment of any cannabis business tax due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise payable under this chapter and any other penalties allowed by law.

B. The notice of assessment shall separately set forth the amount of any tax known by the Tax Administrator to be due or estimated by the Tax Administrator, after consideration of all information within the Tax Administrator's knowledge concerning the business and activities of the person assessed, to be due under each applicable provision of this chapter and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment. The notice shall state that the person has thirty (30) calendar days from the date of the notice to make a written request for an informal hearing before the Tax Administrator. The notice shall also state that if the person fails to timely request an informal hearing within the time allowed, the amount determined by the Tax Administrator is final and conclusive and is immediately due and payable.

22.423 TAX ASSESSMENT – NOTICE REQUIREMENTS.

The notice of assessment shall be served upon the person either by personal delivery, by overnight delivery by a nationally-recognized courier service, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Tax Administrator for the purpose of receiving notices provided under this chapter; or, should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purpose of Section 22.423, a service by overnight delivery shall be deemed to have occurred one (1) calendar day following deposit with a courier and service by mail shall be deemed to have occurred three (3) calendar days following deposit in the United States mail.

22.424 TAX ASSESSMENT – HEARING, APPLICATION, AND DETERMINATION.

Within thirty (30) calendar days after the date of service of the notice of assessment the person may apply in writing to the Tax Administrator for an informal hearing on the assessment. If application for an informal hearing is not made within the time herein prescribed, the tax assessed by the Tax Administrator shall become final and conclusive. Within thirty (30) calendar days after the receipt of any such application for an informal hearing, the Tax Administrator shall cause the matter to be set for an informal hearing before him or her, or his/her designee, unless a later date is agreed to by the Tax Administrator and the person requesting the informal hearing. Notice of such informal hearing shall be given by the Tax Administrator to the person requesting such informal hearing no later than five (5) calendar days prior to such informal hearing. A hearing under this section shall be informal and need not follow any formal rules of evidence. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Administrator should not be confirmed and fixed as the tax due. After such hearing the Tax Administrator shall determine and reassess (if necessary) the proper amount of tax, interest, penalties, and fees to be charged and shall give written notice of the decision to the person in the manner prescribed in Section 22.423 for giving notice of assessment. No appeal of a notice of assessment may be made under Section 22.425 unless an informal hearing is timely requested and the person attends the hearing. If the person fails to appear at the informal hearing, the amount due determined by the Tax Administrator in the notice of assessment is final and conclusive.

22.425 APPEAL.

A taxpayer aggrieved by a decision of the Tax Administrator with respect to the amount of tax, interest, penalties, and fees, if any, due under this chapter may appeal only if an informal hearing was requested and attended pursuant to Section 22.424. An appeal may be made by filing a notice of appeal with the Clerk of the County Board of Supervisors within thirty (30) calendar days of the serving or mailing of the Tax Administrator's decision of the amount due. Upon receipt of a timely notice of appeal, the Clerk of the Board, or his or her designee, shall fix a time and place for hearing such appeal with a County hearing officer appointed pursuant to County Administrative Code section 650 et seq. and shall assign the matter by selecting a hearing officer on a rotating basis from the list of appointed hearing officers. The Clerk of the Board, or his or her designee, shall give at least ten (10) calendar days' notice of the appeal hearing in writing to such taxpayer at the last known place of address. The hearing officer shall render a written decision that shall be served on the taxpayer at the last known place of address. The decision of the hearing officer shall be final and conclusive. Any amount found to be due by the hearing officer shall be immediately due and payable upon the service of the decision. If no notice of appeal is filed within the time prescribed in this section, the Tax Administrator's decision with respect to the amount of tax, interest, penalties, and fees due is final and conclusive.

22.426 RELIEF FROM TAXES – DISASTER OR CROP FAILURE.

A. If a person is unable to comply with any tax requirement imposed under this chapter due to a disaster impacting its cannabis business, the person may notify the Tax Administrator of its inability to comply and request relief from the tax requirement. For purposes of this chapter, “disaster” means fire, flood, storm, tidal wave, earthquake, or similar public calamity resulting in physical damage to real property, whether or not resulting from natural causes.

B. If a person is unable to comply with any tax requirement imposed under this chapter due to crop failure which impacts the cannabis business, the person must notify the Tax Administrator of its inability to comply and request relief from the tax requirement within five (5) calendar days from when the crop failure occurred in order to be considered eligible for such tax relief. For the purposes of this chapter, “crop failure ” means a greatly diminished crop yield relative to expectation, caused by the plants being damaged, killed, or destroyed, or affected in some way that they fail to form clones, mother plants, vegetative and/or flowering plants which must be destroyed as a result of viruses, pathogens, pest, bugs, locust, insects, mites, worms, fungi, bacteria, damaged water systems, plumbing, flooding, excessive heat damage, power outage, or other similar cause which results in physical damage to cannabis plants and/or cannabis products due to events outside the reasonable control of the person.

C. The person shall provide any information required by the Tax Administrator including, without limitation, why relief is requested, the time period for which the relief is requested, the reason relief is needed for a specific amount of time, access to cultivation logs, and video surveillance camera footage for the time period the where the cannabis business has been impacted. The person agrees to grant the Tax Administrator or his/her designee access to the location where the cannabis business has been impacted due to a disaster or crop failure and shall not destroy any evidence which may be deemed essential to verify that such person qualifies for tax relief.

D. The Tax Administrator, in his/her sole discretion, may provide relief from the cannabis business tax requirement for businesses whose operations have been impacted by a disaster or crop failure and such tax relief shall not exceed twenty-five thousand (\$25,000) dollars. Such temporary relief may be granted for a reasonable amount of time, in the Tax Administrator’s sole discretion, and the amount and duration of relief will be based upon how long it would reasonably take for the cannabis business to recover from the disaster or crop failure. The Tax Administrator may require that the cannabis business follow certain conditions to receive temporary relief from the cannabis business tax requirement. The Tax Administrator’s decision on a request for relief and the conditions that may be imposed for relief under this section are final and conclusive and not subject to appeal under Section 22.425.

22.427 CONVICTION FOR VIOLATION – TAXES NOT WAIVED.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.

22.428 VIOLATION DEEMED MISDEMEANOR.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor.

22.429 SEVERABILITY.

If any provision of this chapter, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this chapter or the application of this chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

22.430 REMEDIES CUMULATIVE.

All remedies and penalties prescribed by this chapter, or which are available under any other provision of this code and any other provision of law or equity are cumulative. The use of one or more remedies by the County shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

22.431 AMENDMENT OR MODIFICATION.

Except as set forth in Section 22.431, this chapter may be amended or modified but not repealed by the County Board of Supervisors without a vote of the people. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would expand, extend, or increase the rate of any tax levied pursuant to this chapter beyond the maximums set forth in this chapter. The people of the County of San Diego affirm that the following actions shall not constitute an increase of the rate of a tax:

A. The restoration or adjustment of the rate of the tax to a rate that is no higher than that allowed by this chapter, in those circumstances where, among others, the County Board of Supervisors has previously acted to reduce the rate of the tax or is incrementally implementing an increase authorized by this chapter;

B. An action that interprets or clarifies (i) the methodology of applying or calculating the tax or (ii) any definition applicable to the tax, so long as the interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the provisions of this chapter; or

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C. The collection of the tax imposed by this chapter even if the County had, for some period of time, failed to collect the tax.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The people of the County of San Diego hereby declare that they would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. ENVIRONMENTAL COMPLIANCE. The County Board of Supervisors hereby finds and determines that this ordinance is exempt from the California Environmental Quality Act, Public Resources Code Sections 21000 et seq. ("CEQA") and 14 Cal. Code Re. Sections 15000 et seq. ("CEQA Guidelines"). The calling and noticing of an election for the submission of a ballot measure to voters is not a project within the meaning of CEQA Guidelines 15378. The tax submitted to the voters is a general tax that can be used for any governmental purpose; it is not a commitment to any particular action or actions.

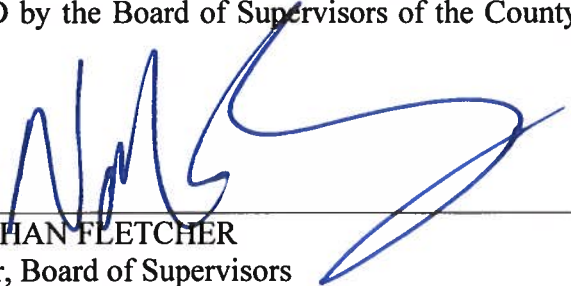
As such, under CEQA Guidelines Section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue generated by the tax were used for a purpose that would have such an effect, the County of San Diego would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guideline Section 15060 CEQA analysis is not required.

SECTION 4. EFFECTIVE DATE. This ordinance shall be voted upon by the electorate at the November 8, 2022 statewide election. Pursuant to the California Constitution, Article XIII C, section 2(b), and California Elections Code § 9122, if a majority of the voters voting in the election on this measure vote in favor of the adoption of this measure, this ordinance shall be deemed valid and binding and shall be considered adopted upon the date that the vote is declared by the County Board of Supervisors and shall go into effect ten (10) days after that date.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY: Walter J. de Lorrell III, Senior Deputy County Counsel

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 28th day of June 2022.



NATHAN FLETCHER
Chair, Board of Supervisors
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Vargas, Anderson, Lawson-Remer, Fletcher
NOES: Desmond

ATTEST my hand and the seal of the Board of Supervisors this 28th day of June 2022.

ANDREW POTTER
Clerk of the Board of Supervisors

By 
Teresa Zurita, Deputy



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