
Proposition D

Ordinance amending the Business and Tax Regulations Code to impose an additional gross receipts tax, starting January 1, 2021, on gross receipts from cannabis business activities, but exempting the first \$500,000 of gross receipts and exempting retail sales of medicinal cannabis; said tax to be between 1% and 5% depending on the type of cannabis business activity and amount of gross receipts, but may be adjusted at any time within a range of 0% to 7% by an ordinance adopted by a two-thirds vote of the Board of Supervisors for any increase (which is limited to 1% annually) or an ordinance adopted by a majority vote of the Board of Supervisors for any decrease; and, starting January 1, 2019, to expand the conditions that subject a person to certain business taxes by including persons with more than \$500,000 in annual gross receipts in the City; and increasing the City's appropriations limit by the increase in the amount of those business taxes collected compared to the prior year and by the amount collected under the new Cannabis Business Tax, for four years from November 6, 2018.

NOTE: Unchanged Code text and uncodified text are in plain font.

Additions to Codes are in single-underline italics Times New Roman font.

Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.

Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Pursuant to Article XIII C of the Constitution of the State of California, this ordinance shall be submitted to the qualified electors of the City and County of San Francisco at the November 6, 2018, consolidated general election.

Section 2. The Business and Tax Regulations Code is hereby amended by revising Section 6.2-12 of Article 6, to read as follows:

SEC. 6.2-12. NEXUS: "ENGAGING IN BUSINESS WITHIN THE CITY."

The taxes imposed by Article 12-A (Payroll Expense Tax Ordinance), ~~and Article 12-A-1 (Gross Receipts Tax Ordinance), Article 21 (Early Care and Education Commercial Rents Tax Ordinance), and Article 30 (Cannabis Business Tax Ordinance)~~, and the registration fee imposed by Article 12 (Business Registration Ordinance) shall apply to any person engaging in business within the City unless exempted therefrom under *such said* Articles. A person is "engaging in business within the City," within the meaning of this Article 6, if that person meets one or more of the following conditions:

(a) The person maintains a fixed place of business within the City; or

(b) An employee, representative, or agent of the person maintains a fixed place of business within the City for the benefit or partial benefit of the person; or

(c) The person or one or more of the person's employees, representatives, or agents owns, rents, leases, or hires real or personal property within the City for business purposes for the benefit or partial benefit of the person; or

(d) The person or one or more of the person's employees, representatives, or agents regularly maintains a stock of tangible personal property within the City, for sale in the ordinary course of the person's business; or

(e) The person or one or more of the person's employees, representatives, or agents employs or loans capital on property within the City for the benefit or partial benefit of the person; or

(f) The person or one or more of the person's employees, representatives, or agents solicits business within the City for all or part of any seven days during a tax year; or

(g) The person or one or more of the person's employees, representatives, or agents performs work or renders services within the City for all or part of any seven days during a tax year; or

(h) The person or one or more of the person's employees, representatives, or agents utilizes the streets within the City in connection with the operation of motor vehicles for business purposes for all or part of any seven days during a tax year; or

(i) The person or one or more of the person's employees, representatives, or agents exercises corporate or franchise powers within the City for the benefit or partial benefit of the person; or

(j) The person or one or more of the person's employees, representatives, or agents liquidates a business when the liquidators thereof hold themselves out to the public as conducting such business; or:

(k) The person has more than \$500,000 in total gross receipts, as the term "gross receipts" is used in Article 12-A-1 of the Business and Tax Regulations Code, in the City during the tax year, using the rules for assigning gross receipts under Section 956.1 of Article 12-A-1.

Section 3. The Business and Tax Regulations Code is hereby amended by adding Article 30, consisting of Sections 3001 through 3014, to read as follows:

ARTICLE 30: CANNABIS BUSINESS TAX

SEC. 3001. SHORT TITLE.

This Article 30 shall be known as the "Cannabis Business Tax Ordinance," and the tax it imposes shall be known as the "Cannabis Business Tax."

SEC. 3002. DEFINITIONS.

Unless otherwise defined in this Article 30, the terms used in this Article shall have the meanings given to them in Articles 6 and 12-A-1 of the Business and Tax Regulations Code, as amended from time to time. For purposes of this Article 30, the following definitions shall apply:

"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" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted

therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Article 30, "Cannabis" does not mean "Industrial Hemp."

"Cannabis Business Activities" means any business activities directly related to Cannabis or Cannabis Products, including but not limited to the cultivation, possession, manufacture, processing, storing, labeling, distribution, or sale of Cannabis or Cannabis Products for consideration. "Cannabis Business Activities" shall not include: (a) business activities indirectly related to Cannabis or Cannabis Products, including the sale of items that do not themselves contain Cannabis or Cannabis Products; (b) laboratory testing; and (c) transportation of Cannabis or Cannabis Products where the person transporting Cannabis or Cannabis Products never takes title to or sells Cannabis or Cannabis Products.

"Cannabis Products" means Cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated Cannabis, or an edible or topical product containing Cannabis or concentrated Cannabis and other ingredients.

"Industrial Hemp" means a fiber or oilseed crop, or both, that is limited to types of the plant Cannabis sativa L. having no more than three tenths of 1% 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.

"Medicinal Cannabis" means Cannabis or a Cannabis Product, respectively, sold for use under the Compassionate Use Act of 1996 (Proposition 215) by a medicinal cannabis patient in California who possesses a physician's recommendation.

"Retail Sale" means any transaction whereby, for any consideration, title to Cannabis or Cannabis Products is transferred from one person to another for the latter person's use and not for resale, and includes the delivery of Cannabis or Cannabis Products to a person for such person's own use and not for resale pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same.

SEC. 3003. IMPOSITION OF TAX.

(a) Except as otherwise provided in this Article 30, for the privilege of engaging in Cannabis Business Activities in the City, the City imposes an annual Cannabis Business Tax on each person engaged in business in the City that receives gross receipts from Cannabis Business Activities attributable to the City.

(b) The Cannabis Business Tax shall be calculated in the following manner:

(1) The person or combined group's first \$500,000 of gross receipts attributable to the City from Cannabis Business Activities shall be exempt from the Cannabis Business Tax.

(2) The person or combined group's gross receipts attributable to the City from the Retail Sale of Cannabis or Cannabis Products, including the amount exempt under Section 3003(b)(1), shall be multiplied as follows:

(A) by 2.5% for gross receipts in excess of the amount exempt under Section 3003(b)(1) and up to and including \$1,000,000; and

(B) by 5% for gross receipts over \$1,000,000.

(3) The person or combined group's gross receipts attributable to the City from all Cannabis Business Activities other than the Retail Sale of Cannabis or Cannabis Products, including the amount exempt under Section 3003(b)(1), shall be multiplied as follows:

(A) by 1% for gross receipts in excess of the amount exempt under Section 3003(b)(1) and up to and including \$1,000,000; and

(B) by 1.5% for gross receipts over \$1,000,000.

(4) The Board of Supervisors may from time to time by an ordinance adopted by at least two-thirds of the members of the Board increase one or more of the rates provided for in Sections 3003(b)(2) and 3003(b)(3), except that no rate may increase more than 1% annually and no rate may exceed 7%. The Board of Supervisors may from time to time by an ordinance adopted by a majority of the members of the Board decrease one or more of the rates provided for in Sections 3003(b)(2) and 3003(b)(3). Any such adjustments in this Section 3003(b)(4) shall be effective no sooner than the tax year following the tax year in which the ordinance adjusting the rate is effective. The Controller shall prepare and submit a market analysis and impact report to the Board before the Board adjusts any tax rate under this Section 3003(b)(4).

(5) If a person or combined group has gross receipts attributable to the City from the Retail Sale of Cannabis or Cannabis Products and from Cannabis Business Activities other than the Retail Sale of Cannabis or Cannabis Products, the person or combined group's Cannabis Business Tax shall be determined as follows:

(A) The person or combined group's taxable gross receipts shall be determined on an aggregate basis first for gross receipts attributable to the City from Cannabis Business Activities other than the Retail Sale of Cannabis or Cannabis Products, and then for gross receipts attributable to the City from the Retail Sale of Cannabis or Cannabis Products:

(B) The \$500,000 exemption in Section 3003(b)(1) shall be applied first to gross receipts attributable to the City from Cannabis Business Activities other than the Retail Sale of Cannabis or Cannabis Products, with any remaining portion of the exemption then applied to gross receipts attributable to the City from the Retail Sale of Cannabis or Cannabis Products;

(C) The rates applicable under Section 3003(b)(2) shall be determined by applying the rate scale commencing with the gross receipts attributable to the City from Cannabis Business Activities other than the Retail Sale of Cannabis or Cannabis Products; and

(D) The Cannabis Business Tax for the person or combined group shall be the sum of the liabilities calculated under Sections 3003(b)(2) and 3002(b)(3), determined in accordance with Sections 3003(b)(5)(A), 3003(b)(5)(B), and 3003(b)(5)(C).

SEC. 3004. ALLOCATION; GROSS RECEIPTS ATTRIBUTABLE TO THE CITY.

(a) Notwithstanding any other provision of this Article 30, any person subject to the Cannabis Business Tax engaging in Cannabis Business Activities in the City and engaging in no Cannabis Business Activities outside the City is subject to the Cannabis Business Tax on all non-exempt gross receipts.

(b) Notwithstanding any other provision of this Article 30, any person subject to the Cannabis Business Tax engaging in Cannabis Business Activities both in the City and outside the City shall determine their or their combined group's gross receipts attributable to the City from Cannabis Business Activities under Section 956.1 of Article 12-A-1. For purposes of this Section 3004(b), "gross receipts" as used in Section 956.1 of Article 12-A-1 shall mean all of the person or combined group's non-exempt gross receipts from Cannabis Business Activities.

SEC. 3005. EXEMPTIONS AND EXCLUSIONS.

(a) For purposes of this Article 30, gross receipts shall not include receipts from the Retail Sale of Medicinal Cannabis.

(b) An organization that is exempt from income taxation by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the California Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended, as qualified by Sections 502, 503, 504, and 508 of the Internal Revenue Code of 1986, as amended, shall be exempt

from taxation under this Article 30, only so long as those exemptions continue to exist under state or federal law.

(c) For purposes of this Article 30, gross receipts shall not include receipts from business activities if, and only so long as and to the extent that, the City is prohibited from taxing such receipts under the Constitution or laws of the United States or under the Constitution or laws of the State of California.

(d) For only so long as and to the extent that the City is prohibited from imposing the Cannabis Business Tax, any person upon whom the City is prohibited under the Constitution or laws of the State of California or the Constitution or laws of the United States from imposing the Cannabis Business Tax shall be exempt from the Cannabis Business Tax.
SEC. 3006. RETURNS; COMBINED RETURNS.

(a) Persons subject to the Cannabis Business Tax shall file returns at the same time and in the same manner as returns filed for the gross receipts tax (Article 12-A-1), including the rules for combined returns under Section 956.3, as amended from time to time.

(b) If a person is subject to the Cannabis Business Tax but is not required to file a gross receipts tax return, such person or combined group's Cannabis Business Tax return shall be filed at the same time and in the same manner as if such person or combined group were required to file a gross receipts tax return.

(c) For purposes of this Article 30, a lessor of residential real estate is treated as a separate person with respect to each individual building in which it leases residential real estate units, notwithstanding Section 6.2-15 of Article 6, as amended from time to time, or subsection (a) of this Section 3006. This subsection (c) applies only to leasing residential real estate units within a building, and not to any business activity related to other space, either within the same building or other buildings, which is not residential real estate. The Tax Collector is authorized to determine what constitutes a separate building and the number of units in a building.

SEC. 3007. TAX COLLECTOR AUTHORIZED TO DETERMINE GROSS RECEIPTS.

The Tax Collector may, in the Tax Collector's reasonable discretion, independently establish a person or combined group's gross receipts attributable to the City from Cannabis Business Activities and establish or reallocate gross receipts among related entities so as to fairly reflect the gross receipts attributable to the City from Cannabis Business Activities of all persons and combined groups.

SEC. 3008. CONSTRUCTION AND SCOPE OF THE CANNABIS BUSINESS TAX ORDINANCE.

(a) This Article 30 is intended to authorize application of the Cannabis Business Tax in the broadest manner consistent with its provisions and with the California Constitution, the United States Constitution, and any other applicable provision of federal or state law.

(b) The Cannabis Business Tax imposed by this Article 30 is in addition to all other City taxes, including the gross receipts tax imposed by Article 12-A-1, as amended from time to time. Accordingly, by way of example and not limitation, persons subject to both the Cannabis Business Tax and the gross receipts tax shall pay both taxes. Persons exempt from either the gross receipts tax or the Cannabis Business Tax, but not both, shall pay the tax from which they are not exempt.

SEC. 3009. ADMINISTRATION OF THE CANNABIS BUSINESS TAX ORDINANCE.

Except as otherwise provided under this Article 30, the Cannabis Business Tax Ordinance shall be administered pursuant to Article 6 of the Business and Tax Regulations Code, as amended from time to time.

SEC. 3010. EXPENDITURE OF PROCEEDS.

Proceeds from the Cannabis Business Tax shall be deposited in the City's General Fund and may be spent for unrestricted general revenue purposes of the City.

SEC. 3011. AMENDMENT OF ORDINANCE.

Except as limited in Section 3003(b)(4) and as limited by Article XIII C of the California Constitution, the Board of Supervisors may amend or repeal this Article 30 by ordinance without a vote of the people.

SEC. 3012. EFFECT OF STATE AND FEDERAL AUTHORIZATION.

To the extent that the City's authorization to impose or collect any tax imposed under this Article 30 is expanded or limited as a result of changes in state or federal statutes, regulations, or other laws, or judicial interpretations of those laws, no amendment or modification of this Article shall be required to conform the taxes to those changes, and the taxes are hereby imposed in conformity with those changes and the Tax Collector shall collect them to the full extent of the City's authorization up to the full amount and rate of the taxes imposed under this Article.

SEC. 3013. SEVERABILITY.

(a) Except as provided in Section 3013(b), if any section, subsection, sentence, clause, phrase, or word of this Article 30, or the application thereof to any person or circumstance, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Article, including the application of such portions to other persons or circumstances. The People of the City and County of San Francisco hereby declare that, except as provided in Section 3013(b), they would have adopted each section, subsection, sentence, clause, phrase, and word of this Article not declared invalid or unconstitutional without regard to whether any other portion of this Article would be subsequently declared invalid or unconstitutional.

(b) If the imposition of the Cannabis Business Tax in Section 3003 is held in its entirety to be facially invalid or unconstitutional in a final court determination, the remainder of this Article 30 shall be void and of no force and effect, and the City Attorney shall cause it to be removed from the Business and Tax Regulations Code.

SEC. 3014. SAVINGS CLAUSE.

No section, clause, part, or provision of this Article 30 shall be construed as requiring the payment of any tax that would be in violation of the Constitution or laws of the United States or of the Constitution or laws of the State of California.

Section 4. In the event that an ordinance is enacted prior to November 6, 2018, amending Section 6.2-12 of Article 6 of the Business and Tax Regulations Code to expand its application to taxes imposed by Article 21 (Early Care and Education Commercial Rents Tax Ordinance) of the Business and Tax Regulations Code, such amendments to Section 6.2-12 of Article 6 shall be null and void in their entirety, and the amendments made to Section 6.2-12 of Article 6 in Section 2 of this ordinance shall take effect in their entirety.

Section 5. Appropriations Limit Increase. Pursuant to California Constitution Article XIII B and applicable laws, for four years from November 6, 2018, the appropriations limit for the City shall be increased by the increase in the sum of the amounts collected by the levy of the taxes imposed under Articles 10, 10B, 12, 12-A, and 12-A-1 of the Business and Tax Regulations Code in the current fiscal year compared with the prior fiscal year, and by the aggregate sum collected by the levy of the tax imposed under Section 3 of this ordinance.

Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The People of the City and County of San Francisco hereby declare that they would have

passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 7. No Conflict with Federal or State Law. Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 8. Scope of Ordinance. In enacting this ordinance, the People of the City and County of San Francisco intend to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions or deletions, in accordance with the "Note" that appears under the official title of the ordinance.

Section 9. Effective and Operative Dates. The effective date of this ordinance shall be 10 days after the date the official vote count is declared by the Board of Supervisors. This ordinance shall become operative on January 1, 2019, except for Section 3 of this ordinance, which shall become operative on January 1, 2021.