

ORDINANCE NO. Introduction (CM)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE AMENDING SECTIONS 3-6.1202 (DEFINITIONS) AND 3-6.1206 (AMOUNT OF TAX OWED) OF ARTICLE 12 (WATSONVILLE CANNABIS BUSINESS TAX) OF CHAPTER 6 (TAXATION) OF TITLE 3 (FINANCE) OF THE WATSONVILLE MUNICIPAL CODE

Amends Ordinance No. 1330-16 (CM) Pursuant to §3-6.1232

WHEREAS, the Council, by Resolution No. 111-16 (CM) called a General Municipal Election to be held in the City of Watsonville on November 8, 2016, as required by law, for the purpose of submitting to the qualified electors of the City a measure whether to impose a tax on cannabis cultivation of not more than \$20 per square foot per year of canopy area, not more than 2.5% on gross receipts from manufactured cannabis product, and not more than 10% on gross receipts from the retail sale of cannabis; and

WHEREAS, the voters in the City of Watsonville at the election conducted on November 8, 2016, enacted the Watsonville Cannabis Business Tax Measure (Measure L); and

WHEREAS, Measure L was codified as Article 12 of Chapter 6 of Title 3 of the Municipal Code; and

WHEREAS, § 3-6.1202 provides in pertinent part that notwithstanding the maximum tax rates for cultivation, manufactures and dispensary sales set forth in subdivisions (a), (b) and (c) of § 3-6.1206, the Council may, in its discretion, at any time by ordinance, adopt a lower tax rate, and

WHEREAS, §3-6.1232 of Measure L provides that Article 12 may be repealed or amended by the Council without a vote of the people, so long as the rate of any tax is not increased; and

WHEREAS, subdivision (c) of §3-6.1232 further provides that Council action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, is not an increase in the rate of tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with Measure L; and

WHEREAS, the Council finds that the changes to the definitions in § 3-6.1202 merely interprets and clarifies the definitions set forth in Measure L and are consistent with the language of Measure L; and

WHEREAS, the Council finds that the changes in the amount of tax owed as set forth in Section 3-6.1206 and the tax rate as set forth in § 3-6.1206 are consistent with Measure L.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WATSONVILLE, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

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CHAPTER 6 TAXATION

Article 12. Watsonville Cannabis Business Tax

SECTION 1. ENACTMENT.

Article 12 (Watsonville Cannabis Business Tax) of Chapter 6 (Taxation) of Title 3 (Finance) of the Watsonville Municipal Code is hereby amended by deleting Sections 3-6.1202 (Definitions) and 3-6.1206 (Amount of tax owed) in their entirety and replacing with new Sections 3-6.1202 (Definitions) and 14-18.326 (Amount of tax owed) to read in words and figures and follows:

Sec. 3-6.1202 Definitions.

The definitions in this section shall govern the application and interpretation of this chapter.

The definitions promulgated for the California Cannabis Cultivation Program in Division 8 (Cannabis Cultivation) of Title 3 (Food and Agriculture) of the California Code of Regulations Section 8000 et seq., 3 CCR 8000.

The definitions promulgated for the California Bureau of Cannabis Control in Division 42 (Bureau of Cannabis Control) of Title 16 (Professional and Vocational Regulations) of the California Code of Regulations Section 5000 et seq., 16 CCR 5000.

(a) "Business" shall include all activities engaged in or caused to be engaged in within the City, 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.

~~_(b) “Cannabis processing” shall mean the drying, curing, grading, or trimming of cannabis within a permitted cannabis cultivation facility or as part of a standalone cannabis processing facility.~~

(~~b~~e) “Cultivated area” shall mean any area indoors that is the greater of either:

- (1) the total area of a property that is densely or primarily occupied by cannabis cultivation; or
- (2) one square foot per juvenile or mature cannabis plant on the parcel.

(~~c~~d) “Employee” shall mean 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 or room and board.

(~~d~~e) “Engaged in business” shall mean the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities. A person shall be deemed engaged in business within the City if:

- (1) Such person or person's employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;
- (2) Such person or person's employee owns or leases real property within the City for business purposes;

(3) Such person or person's employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;

(4) Such person or person's employee regularly conducts solicitation of business within the City;

(5) Such person or person's employee performs work or renders services in the City on a regular and continuous basis involving more than five (5) working days per year;

(6) Such person or person's employee utilizes the streets within the City in connection with the operation of motor vehicles for business purposes.

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

(ef) "Evidence of doing business" shall mean whenever any person shall, by use of signs, circulars, cards or any other advertising media, including the use of Internet or telephone solicitation, represent that such person is engaged in cannabis business in the City, then these facts may be used as evidence that such person is engaged in business in the City.

(fe) "Gross receipts," except as otherwise specifically provided, shall mean the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature,

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, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

- (1) Cash discounts allowed and taken on sales;
- (2) Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
- (3) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (4) 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;
- (5) Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;
- (6) 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;
- (7) Cash value of sales, trades or transactions between departments or units of the same business;
- (8) 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;

(9) Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one and no/100s (\$1.00) dollar;

(10) 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 Finance Department 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.

(g) "Gross receipts" subject to the business tax shall be that portion of gross receipts relating to business conducted within the City.

(h) "Cannabis business" or "medical cannabis business" shall mean either of the following:

(1) Any location where cannabis is distributed, delivered, dispensed, sold or given away to a qualified patient, a person with an identification card, or a primary caregiver.

(2) Any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, dispense, or give away cannabis to a qualified patient, a person with an identification card, or a primary caregiver.

(3) Notwithstanding subsections (k)(1) and (k)(2) of this section, "medical cannabis business" shall not include any of the following:

(i) A residence or dwelling unit in which a resident may possess and cultivate amounts of cannabis in compliance with State law.

(j) "Cannabis business tax," "business tax" or "cannabis tax" shall mean the tax due for engaging in cannabis business in the City of Watsonville.

(k) "Person" shall mean, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

(l) "Sale" shall mean and includes any sale, exchange, or barter.

(m) "Finance Director" shall mean the Director of Finance for the City of Watsonville or such other person designated by the City Manager from time to time to administer this chapter.

Sec. 3-6.1206 Amount of tax owed.

(a) Cultivation. Every person who engages in the business of cannabis cultivation in the City shall pay an annual tax of not to exceed twenty and no/100ths (\$20.00) dollars per square foot per year (\$20.00/SF/YR) of canopy area. The tax shall be paid monthly to the Finance Director. Notwithstanding the maximum tax rate of twenty and no/100ths (\$20.00) dollars per square foot per year imposed under this subsection, the City Council may, in its discretion, at any time by ordinance, adopt a lower tax rate for cannabis cultivation, as defined in such ordinance, subject to the

maximum rate set forth in this subsection. The Council may by ordinance also increase the tax from time to time, not to exceed the maximum tax of this subsection.

(1) The Cannabis tax shall be set at \$10 per square foot for flowering canopy, and \$1 per square foot for immature and/or nursery plants.

~~(2) The Cannabis tax shall be set at 2% of gross receipts for processing.~~

(b) Manufacturers. Every person who engages in the business of manufactured cannabis or manufacture of cannabis products in the City shall pay to the City a tax of not more than two and one-half percent (2.5%) of gross receipts. The tax shall be paid monthly in arrears to the Finance Director at the rate of eight and thirty-three-one-hundredths (8.33%) percent of the annual tax per month or any portion of a month. Notwithstanding the maximum tax rate of two and one-half (2.5%) percent of gross receipts imposed under this subsection, the Council may, in its discretion, at any time by ordinance, implement a lower tax rate for all cannabis manufacture businesses as defined in such ordinance, subject to the maximum rate set forth in this subsection. The Council may by ordinance also increase any such tax rate from time to time, not to exceed the maximum tax rate established in this subsection. The cannabis business tax for manufacturers is set at two and one-half (2.5%) percent of gross receipts from the manufacture of cannabis or manufactured cannabis products in the City through and including February 2018 to allow collection and analysis of such data as may be determined by the City Council to be appropriate to consider any change in the initial two and one-half (2.5%) percent rate after February 2018.

(c) Retail Sales. Every person engaged in retail cannabis sales business, including but not limited to a retail cannabis business in the City shall pay a business tax

of no more than ten percent (10%) of gross receipts. The tax shall be paid monthly to the Finance Director. Notwithstanding the maximum tax rate of ten (10%) percent of gross receipts imposed under this subsection, the Council may, in its discretion, at any time by ordinance, implement a lower tax rate for all retail cannabis sales, as defined in such ordinance, subject to the maximum ten percent (10%) above. The Council may by ordinance also increase any such tax rate from time to time, not to exceed the maximum tax rate established under this subsection. The cannabis business tax for retail sales is set at five (5%) percent of gross receipts from retail sales of cannabis, and cannabis products.

SECTION 2. PUBLICATION.

This ordinance shall be published in the Watsonville Register-Pajaronian and/or Santa Cruz Sentinel in compliance with the provisions of the Charter of the City of Watsonville.

SECTION 3. EFFECTIVE DATE.

This ordinance shall be in force and take effect thirty (30) days after its final adoption.
