

ORDINANCE No. 18-

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA ADDING ARTICLE 21
TO CHAPTER 8 OF THE HAYWARD MUNICIPAL CODE RELATING TO A
COMMERCIAL CANNABIS TAX

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Article 21 is added to Chapter 8 of the Hayward Municipal Code and is hereby enacted to read as follows:

ARTICLE 21
COMMERCIAL CANNABIS TAX

SEC. 8-21.00 FINDINGS AND PURPOSE. The City Council finds and declares as follows:

- (a) On November 8, 2016, the voters of the City of Hayward approved Measure EE authorizing the City Council to enact an ordinance imposing a general tax of up to 15% of gross sales for all products associated with medical or adult use of cannabis, from cultivation, distribution, manufacturing, and retailing of cannabis or products derived therefrom, if the City of Hayward permits cannabis business activities, such tax to be in addition to any other taxes imposed by the City of Hayward or the State of California
- (b) On October 30, 2017 and November 28, 2017, respectively, the City Council enacted regulatory and land use ordinances authorizing cannabis businesses within the City of Hayward subject to compliance with local and state regulations.
- (c) This Article is enacted solely to raise revenue for municipal purposes and is not intended for regulation.
- (d) The cannabis business tax is intended to aid in the alleviation of the City of Hayward's ongoing general fund operating deficit and would be used for any valid municipal purpose, including police and fire services, paramedic services, youth and anti-gang programs, education, disaster preparedness, economic development, street repairs and maintenance, graffiti removal, and code enforcement.

SEC. 8-21.10 DEFINITIONS. For the purpose of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their content that a different meaning is intended:

“Annual gross receipts” means the gross receipts produced by the cannabis business during the twelve (12) month period between issuance and renewal of the business license for the cannabis business.

“Building” means any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind, or anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

“Business improvements” means square footage used, on a regular basis, for the operation of a nonprofit organization as defined in Article XIII, Section 26 of the California Constitution, or a for profit organization organized in a manner that is recognized by the California Secretary of State regardless of whether it is owned or leased.

“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 (excepted the resin extracted therefrom), fiber, oil, cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this article “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the California Health and Safety code.

“Cannabis Product” 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.

“Commercial Cannabis business” includes cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis or cannabis products as permitted by Article 14, Chapter 6 of this Code.

“Cannabis Testing Laboratory” means a laboratory described in Section 26101 of the California Business and Professions Code holding a Type 8 license as described in Section 26050(a) of the California Business and Professions Code.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.

“Discontinued, dissolved or otherwise terminated” means the date the cannabis business is no longer in operation. The City’s Finance Director, using all evidence, including evidence provided by the cannabis business permittee, will make the determination as to whether a cannabis business has been discontinued, dissolved or otherwise terminated.

“Distribution” means the procurement, sale, and transport of cannabis and cannabis products between state licensees.

“Gross receipts” GROSS RECEIPTS shall mean the total amount of the sale price of all sales and the total amount charged or received for the performance of any act, service, or employment of whatever nature it may be, for which a charge is made or credit allowed; and included in GROSS RECEIPTS shall be all receipts, cash, credits, and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid or payable or losses or other expenses whatever. Excluded from GROSS RECEIPTS shall be cash discounts allowed and taken on sales, value of property accepted as part of the purchase price and which property will later be sold, any tax which is measured by the sales price or the gross receipts from the sale or which is a stated sum per unit of such property sold, included in or added to the purchase price and collected from the consumer or

purchaser, and such part of the sale price of property returned by the purchaser upon revision of the contract of sale as is refunded either in cash or by credit.

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

“Manufacturer” means a person or entity that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Medical/medicinal cannabis” or **“Medical/medicinal cannabis product”** means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

“Nonprofit organization” means any association, corporation or other entity that is exempt from taxation measured by income or gross receipts under Article XIII, Section 26 of the California Constitution.

“Nursery” means a permittee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

“Owner” means any of the following: (1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien, or encumbrance. (2) The chief executive officer of a nonprofit or other entity. (3) A member of the board of directors of a nonprofit. (4) An individual who will be participating in the direction, control, or management of the person applying for a permit.

“Permittee” or **“cannabis business permittee”** means a person who has been issued a special permit or license for operation of a cannabis business within the City.

“Person” includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

“Sell,” “sale,” and **“to sell”** include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a state licensee to the state licensee from whom the cannabis or cannabis product was purchased.

“State Licensee” means a person or entity that has been issued a license pursuant to state law for commercial cannabis activity as defined by state law.

SEC. 8-21.11 TAX IMPOSED. In addition to any requirements imposed elsewhere in the Hayward Municipal Code, for the privilege of operating a commercial cannabis business in the City, an annual tax is hereby imposed on each permittee operating a commercial cannabis business as follows:

- (a) Every commercial cannabis business must pay an annual tax of up to 15% of gross receipts for all products associated with medical or adult use of cannabis, from cultivation, distribution, manufacturing, and retailing of cannabis or products derived therefrom. The tax under this Article shall not be imposed on commercial cannabis businesses unless and until the City Council, by ordinance or resolution, takes action to set a tax rate not to exceed 15% of gross receipts.
- (b) The City Council may, in its discretion at any time, by ordinance or resolution, impose the tax authorized by this section at a lower rate. No action taken by the City Council under this subsection to reduce the tax rate will prevent it from subsequently increasing the tax rate for cannabis business to the maximum rate specified in this section. If the City Council sets the tax rate by resolution, the resolution shall be published in the same manner and within the same time as ordinances are required to be published by law. Resolutions or ordinances imposing the tax rate shall be codified as amendments to this section adding new

subsections in the following form: “Pursuant to Subsection (a) the City Council adopted [Ordinance/Resolution No.] setting the cannabis business tax rate at [%] of gross receipts. Commencing on [operative date] every commercial cannabis business in the City shall pay a cannabis business tax at the rate of [%] of gross receipts.

SEC. 8-21.12 DECLARATION STATEMENT REQUIRED

At the time of payment of the taxes imposed by this Article, each commercial cannabis business permittee must file with the City Finance Department a statement, under oath, showing the true and correct amount of annual gross receipts derived from the cannabis business allowed by the special permit or license issued to the permittee. A signed declaration must be attached to the statement included therein, which will be in substantially the same form as: “I hereby declare under penalty of perjury that the foregoing is true and correct.” The City has the right to audit the matters reported in the statement to determine the accuracy of the figures contained therein.

SEC. 8-21.13 PAYMENT - TIMING

- (a) All taxes imposed by this Article on a commercial cannabis business whether it is a nonprofit organization or a for-profit business must be paid to the City’s Finance Department on or before the fifteenth (15th) day after the close of the month for which the tax is due. Permittees or operators of commercial cannabis businesses must file a monthly report with the City, even if there are no taxes currently due. The report will show the annual gross receipts to date as of the close of the prior month and will be used to calculate the amount of tax due. Payment will accompany the form. The form will be provided by the City and the City may revise the report without advance notice from time to time. Payment of taxes imposed by this Article must be in the correct amount of taxes due and owing. Such sums correctly reflecting taxes will be accepted by the City, subject, however, to the City’s right to conduct an audit.
- (b) If any permittee or operator of a cannabis business is liable for any amount of tax, interest or penalty under this Article, and he or she sells or otherwise disposes of the business, his or her successors or assigns must withhold from the purchase price a

sum sufficient to cover such amount until the former permittee or operator produces from the City either a receipt reflecting full payment or a certificate stating that no amount is due.

- (c) If the purchaser of a cannabis business fails to withhold a sum from the purchase price as required in subsection (b) of this section, he or she will be personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price.

SEC. 8-21.14 AUDIT OF DECLARATION STATEMENT AND PAYMENT

- (a) The City has the right to audit the matters referred to in the declaration statement, and to determine the correctness of the figures set forth in such statement, and the amount payable to the City.
- (b) The books, records and accounts of any permittee may be inspected and audited by the City.
- (c) Such an inspection and audit may be performed by the City's Finance Director or designee, a qualified accountant, a City official selected by the Finance Director, or a consultant selected by the Finance Director.
- (d) To facilitate such audits, the permittee must keep complete records of all transactions related to the receipt or disbursement of funds arising out of or related to cannabis business operations during the preceding three-year period. All such records must be made available to the City for audit at the permittee's place of doing business or such other place that the City may designate during normal business hours after reasonable prior notice.
- (e) Any failure or refusal of any permittee to make and file a declaration statement within the required time period, or to pay such sums by way of taxes when the same are due and payable in accordance with the provisions of this article, or to permit such inspection of such books, records and accounts of such permittee will be and constitute full and sufficient grounds for suspension or revocation of any special business license or permit for operation of a cannabis business.

SEC. 8-21.15 NOTICE NOT REQUIRED BY CITY

The City is not required to send a delinquency or other notice or bill to any person

subject to the provisions of this Article, and failure to send such notice or bill will not affect the validity of any tax, interest or penalty due under the provisions of this Article.

SEC. 8-21.16 TAX DEEMED DEBT TO THE CITY

The amount of any tax, penalties and interest imposed by the provisions of this Article will be deemed a debt to the City, and any permittee carrying on any business without having paid to the City the tax under this Article will be liable to an action in the name of the City in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such business.

SEC. 8-21.17 DEFICIENCY DETERMINATIONS

- (a) If the Finance Director is not satisfied that a declaration statement filed, as required under the provisions of this Article, is correct, or that the amount of tax is correctly computed, the Finance Director may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the declaration statement or upon the basis of any information in the City's possession or that may come into the City's possession.
- (b) The City may make more than one deficiency determination of the amount of tax due for a period or periods.
- (c) In the case of a cannabis business which is discontinued, dissolved or otherwise terminated, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.
- (d) Whenever a deficiency determination is made, the City will provide fifteen (15) calendar days' notice to the permittee.

SEC. 8-21.18 TAX ASSESSMENT – NON PAYMENT- FRAUD.

- (a) Under any of the following circumstances, the finance director may make and give notice of an assessment of the amount of tax owed by a cannabis business under this Article:

- (1) If the permittee has not filed any declaration statement required under the provisions of this Article;
 - (2) If the permittee has not paid any tax due under the provisions of this Article;
 - (3) If the permittee has not, after demand by the Finance Director, filed a corrected declaration statement or furnished to the Finance Director adequate substantiation of the information contained in a statement of revenue already filed, or paid any additional amount of tax due under the provisions of this Article.
- (b) The notice of assessment will separately set forth the amount of any tax known or estimated by the Finance Director to be due, after full consideration of all information within his or her knowledge concerning the cannabis business activities of the person or permittee assessed and will include the amount of any penalties, costs or interest accrued on each amount to the date of the notice of assessment.

SEC. 8-21.19 TAX ASSESSMENT – NOTICE REQUIREMENTS

The notice of assessment will be served upon the permittee either by personal service on the permittee, or by depositing the notice in the United States mail, postage prepaid thereon, addressed to the permittee at the address of the location of the business appearing on the face of the commercial cannabis business permit issued under Chapter 6, Article 14 of this Code to the permittee, or to such other address as the permittee registers with the Finance Director for the purpose of receiving notices provided under this Article. For the purposes of this section, service by mail is complete at the time of deposit in the United States mail.

SEC. 8-21.20 TAX ASSESSMENT - HEARING

- (a) Within ten (10) days after the date of service of a notice issued under Section 8-21.19, the permittee may apply in writing to the Finance Director for a hearing on the assessment.
- (b) If application for a hearing before the Finance Director is not made within the time herein prescribed, the tax assessed by the Finance Director will become final and conclusive.

- (c) Within thirty (30) days of the receipt of any such application for hearing, the Finance Director will cause the matter to be set for hearing before him or her not later than thirty (30) days after the date of application, unless a later date is agreed to by the Finance Director and the permittee requesting the hearing.
- (d) Notice of such hearing will be given by the Finance Director to the permittee requesting such hearing not later than five (5) days prior to such hearing. At such hearing, said permittee may appear and offer evidence why the assessment as made by the Finance Director should not be confirmed and fixed as a tax.
- (e) After such hearing, the Finance Director will make a written determination and may at his or her discretion reassess the proper tax to be charged and will give written notice thereof to the permittee.

SEC. 8-21.21 REMEDIES FOR VIOLATION – TAXES NOT WAIVED

- (a) Nothing in this Article limits the City from using any remedy legally available for violations of this Article, including, but not limited to, the penalties under Article 3, Chapter 1 of this Code.
- (b) The conviction and punishment of any person for failure to pay the required tax will not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction.
- (c) No civil action will prevent a criminal prosecution for any violation of the provisions of this article or of any State law requiring the payment of all taxes

SEC. 8-21.22 AMENDMENTS OF ARTICLE

The City Council may amend this Article at any time as long as the amendments do not increase the tax or, change the method of calculating the tax.

SEC. 8-21.23 ADMINISTRATIVE REGULATIONS

The City Manager may adopt administrative regulations as needed to implement this Article.

Section 2. California Environmental Quality Act (CEQA). The City Council independently finds and determines that this action is exempt from CEQA pursuant to

Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

Section 3. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. This Ordinance shall become effective upon adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of, ___ 2018, by Council Member _____ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the day of _____ , 2018, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBER

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward