

**DRAFT**

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 4.66 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO RENAME THE MARIJUANA BUSINESS TAX THE CANNABIS BUSINESS TAX, TO MAKE OTHER TECHNICAL REVISIONS TO CHANGE THE TERM "MARIJUANA" TO "CANNABIS" THROUGHOUT CHAPTER 4.66 AND TO REDUCE THE CANNABIS BUSINESS TAX RATE FOR PERSONS ENGAGED IN THE CULTIVATION, MANUFACTURING, DISTRIBUTION, OR LABORATORY TESTING OF CANNABIS**

**WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

**WHEREAS**, the City Council of the City of San José is the decision-making body for this Ordinance; and

**WHEREAS**, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

**SECTION 1.** The title of Chapter 4.66 of Title 4 of the San José Municipal Code is amended to read as follows:

## CHAPTER 4.66

### **MARIJUANACANNABIS BUSINESS TAX**

SECTION 2. Section 4.66.070 of Chapter 4.66 of Title 4 of the San José Municipal Code is amended to read as follows:

#### **4.66.070 Engaged in Business**

- A. "Engaged in business" means the commencing, conducting, operating, managing or carrying on of a marijuanacannabis 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.
- B. 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 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."

SECTION 3. Section 4.66.080 of Chapter 4.66 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.66.080 Evidence of Doing Business**

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 ~~marijuana~~cannabis business in the city, then these facts may be used as evidence that such person is engaged in business in the city.

SECTION 4. Section 4.66.100 of Chapter 4.66 of Title 4 of the San José Municipal Code is renumbered and amended to read as follows:

**~~4.66.100~~4.66.042 CannabisMarijuana**

The term "~~cannabis~~marijuana" means all parts of the plant Cannabis Sativa L., whether growing or not; the seeds thereof; 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.

SECTION 5. Section 4.66.110 of Chapter 4.66 of Title 4 of the San José Municipal Code is renumbered and amended to read as follows:

**4.66.1104.66.044 ~~Marijuana-Cannabis~~ Business**

The term "~~marijuana-cannabis~~ business" means business activity including but not limited to, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, wholesale, and/or retail sales of ~~marijuana-cannabis~~ and any ancillary products in the city, whether or not carried on for gain or profit.

SECTION 6. Section 4.66.120 of Chapter 4.66 of Title 4 of the San José Municipal Code is renumbered and amended to read as follows:

**4.66.1204.66.046 ~~Marijuana-Cannabis~~ Business Tax**

"Business tax" or "~~marijuana-cannabis~~ business tax" or "~~marijuana-cannabis~~ tax" shall mean the tax due for engaging in ~~marijuana-cannabis~~ business in San José.

SECTION 7. Section 4.66.210 of Chapter 4.66 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.66.210 ~~Business Tax Certificate - Required~~**

- A. There are imposed upon all persons engaged in ~~marijuana~~cannabis business in the city taxes in the amounts prescribed in this chapter and Chapter 4.76. It shall be unlawful for any person, either for him or herself or for any other person, to commence, transact or carry on any ~~marijuana~~cannabis business in the city

without first having procured a business tax certificate from the city under Chapter 4.76 and having paid the tax set forth therein, and without complying with any and all provisions contained in this chapter. The carrying on of any marijuanacannabis business without complying with any and all provisions of this chapter and Chapter 4.76, shall constitute a separate violation of this chapter and Chapter 4.76 for each and every day that such marijuanacannabis business is so carried on.

- B. The business tax certificate required to be obtained under Chapter 4.76 and the taxes required to be paid under this chapter and Chapter 4.76 are declared to be required pursuant to the taxing power of the City of San José solely for the purpose of obtaining revenue and are not regulatory permit fees.

SECTION 8. Section 4.66.220 of Chapter 4.66 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.66.220 Payment of Tax Does Not Authorize Unlawful Business**

- A. The payment of a business tax required by this chapter, and its acceptance by the city, shall not entitle any person to carry on any marijuanacannabis business unless the person has complied with all of the requirements of this code and all other applicable laws, nor to carry on any marijuanacannabis business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such marijuanacannabis business is in violation of any law.
- 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 ordinance of the city.

SECTION 9. Section 4.66.250 of Chapter 4.66 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.66.250 Amount of Business Tax Owed**

- A. In addition to the business tax imposed under Chapter 4.76 of this Code and the requirements set forth therein, every person engaged in marijuanacannabis business in the City shall pay a business tax at a rate of up to ten percent (10%) of gross receipts. The tax under this Chapter shall not be imposed on marijuanacannabis businesses unless and until the City Council, by ordinance, takes action to set a tax rate not to exceed ten percent (10%) of gross receipts.
- B. Notwithstanding the maximum tax rate of ten percent (10%) of gross receipts imposed under Subsection A, the City Council may, in its discretion, at any time by ordinance, implement a lower tax rate for all marijuanacannabis businesses or establish differing tax rates for different categories of marijuanacannabis businesses, as defined in such ordinance, subject to the maximum rate of ten percent (10%) of gross receipts. The City Council may, by ordinance, also increase any such tax rate from time to time, not to exceed the maximum tax rate of ten percent (10%) of gross receipts established under Subsection A.
- C. Pursuant to Subsection A, the City Council adopted Ordinance No. 28867 setting the marijuanacannabis business tax at seven percent (7%) of gross receipts. Commencing on the operative date of this Chapter, every person engaged in marijuanacannabis business in the City shall pay a marijuanacannabis business tax at the rate of seven percent (7%) of gross receipts.

D. Pursuant to Subsection A, the City Council adopted Ordinance No. 29262 increasing the ~~marijuanacannabis~~ business tax rate to ten percent (10%) of gross receipts. Commencing on July 1, 2013, every person engaged in ~~marijuanacannabis~~ business in the City shall pay a ~~marijuanacannabis~~ business tax at the rate of ten percent (10%) of gross receipts.

E. Pursuant to Subsection A, the City Council adopted Ordinance No. [REDACTED], reducing the ~~marijuanacannabis~~ business tax rate for businesses engaged in certain activities from ten percent (10%) of gross receipts to the rates set forth below.

1. Commencing on July 1, 2019, every person engaged in the cultivation of ~~marijuanacannabis~~ in the City shall pay a ~~marijuanacannabis~~ business tax at the rate of four percent (4%) of the gross receipts derived from the cultivation of ~~marijuanacannabis~~ in the City.
2. Commencing on July 1, 2019, every person engaged in the manufacturing of ~~marijuanacannabis~~ in the City shall pay a ~~marijuanacannabis~~ business tax at the rate of three percent (3%) of the gross receipts derived from the manufacturing of ~~marijuanacannabis~~ in the City.
3. Commencing on July 1, 2019, every person engaged in the distribution of ~~marijuanacannabis~~ in the City shall pay a ~~marijuanacannabis~~ business tax at the rate of two percent (2%) of the gross receipts derived from the distribution of ~~marijuanacannabis~~ in the City.
4. Commencing on July 1, 2019, every person engaged in the laboratory testing of ~~marijuanacannabis~~ in the City shall pay a ~~marijuanacannabis~~

business tax at the rate of zero percent (0%) of the gross receipts derived from the laboratory testing of ~~marijuana~~cannabis in the City.

SECTION 10. Section 4.66.300 of Chapter 4.66 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.66.300 Payment - Penalty for Delinquency**

- A. Any person who fails or refuses to pay any 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 twenty-five percent 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 a rate established by resolution of the city council; and
  2. An additional penalty equal to twenty-five percent of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and interest on the unpaid penalties calculated at the rate established by resolution of the city council.
- B. Whenever a check is submitted in payment of a business tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in this section plus any amount allowed under state law.

- C. The business tax due shall be that amount due and payable from the first date on which the person was engaged in marijuanacannabis business in the city, together with applicable penalties and interest calculated in accordance with Subsection A. above.

SECTION 11. Section 4.66.530 of Chapter 4.66 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.66.530 Audit and Examination of Records and Equipment**

The director shall have the power to audit and examine all books and records of persons engaged in marijuanacannabis business including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in marijuanacannabis business, and, where necessary, all equipment, of any person engaged in marijuanacannabis business in the city, for the purpose of ascertaining the amount of business tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this chapter. If such person, after written demand by the director, refuses to make available for audit, examination or verification such books, records or equipment as the director requests, the director may, after full consideration of all information within his or her knowledge concerning the marijuanacannabis business and activities of the person so refusing, make an assessment in the manner provided in Sections 4.66.560 through 4.66.580 of any taxes estimated to be due.

SECTION 12. Section 4.66.540 of Chapter 4.66 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.66.540 Tax Deemed Debt to City**

The amount of any tax, penalties and interest imposed by the provisions of this chapter shall be deemed a debt to the city and any person carrying on any ~~marijuana~~cannabis business without first having procured a business tax certificate shall be liable in 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.

**SECTION 13.** This ordinance shall take effect immediately upon adoption under Section 605(c) of the City Charter.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk