



CITY COUNCIL AGENDA REPORT

DATE: AUGUST 1, 2022

FILE I.D.: TAX495

SECTION: PUBLIC HEARINGS

DEPT.: ECONOMIC DEV.

ITEM NO.: A

PREPARER: M. FUENTES

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 22-3374 ORDERING THE SUBMISSION TO THE VOTERS OF THE CITY OF MONTCLAIR A MEASURE TO CONSIDER A GENERAL BUSINESS LICENSE TAX ON COMMERCIAL RETAIL SALES OF CANNABIS AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE; AND PROVIDING FOR THE FILING OF ARGUMENTS AND REBUTTAL ARGUMENTS IN FAVOR OF AND AGAINST THE MEASURE

CONSIDER ADOPTION OF RESOLUTION NO. 22-3375 ORDERING THE SUBMISSION TO THE VOTERS OF THE CITY OF MONTCLAIR AN ADVISORY MEASURE FOR THE CITY COUNCIL TO CONSIDER AND APPROVE ORDINANCES LEGALIZING AND LICENSING MEDICAL AND ADULT-USE CANNABIS BUSINESS IN THE CITY OF MONTCLAIR AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022; DIRECTING THE CITY ATTORNEY TO PREPARE AND IMPARTIAL ANALYSIS OF THE ADVISORY MEASURE; AND PROVIDING FOR THE FILING OF ARGUMENTS AND REBUTTAL ARGUMENTS IN FAVOR OF AND AGAINST THE ADVISORY MEASURE

CONSIDER AUTHORIZING THE CITY ATTORNEY TO COMPLETE A FINAL REVIEW OF, AND MAKE ANY REVISIONS NECESSARY TO, RESOLUTION NOS. 22-3374 AND 22-3375 PRIOR TO SUBMISSION TO THE SAN BERNARDINO COUNTY REGISTRAR OF VOTERS FOR INCLUSION OF THE TWO MEASURES ON THE BALLOT AT THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION

FIRST READING — CONSIDER ORDINANCE NO. 22-999 ADDING CHAPTER 4.76 TO TITLE 4 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO IMPOSING A CANNABIS BUSINESS LICENSE TAX (SUBJECT TO FINAL APPROVAL BY THE VOTERS AT THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION)

CONSIDER SETTING A PUBLIC HEARING FOR SECOND READING AND ADOPTION OF ORDINANCE NO. 22-999 FOR MONDAY, AUGUST 15, 2022, AT 7:00 P.M.

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Resolution No. 22-3374 ordering the submission to the voters of the City of Montclair a measure to consider a General Business License Tax on Commercial Retail Sales of Cannabis at the General Municipal Election to be held on Tuesday, November 8, 2022; directing the City Attorney to prepare an impartial analysis of the measure, and providing for the filing of arguments and rebuttal arguments in favor and against the measure.

The City Council is also requested to consider adoption of Resolution No. 22-3375 ordering the submission to the voters of the City of Montclair an advisory measure for the City Council to consider approving the legalization and permitting/licensing of medical and adult use of commercial cannabis businesses in the City of Montclair to be held on Tuesday, November 8, 2022; directing the City Attorney to prepare an impartial analysis of the measure, and providing for the filing of arguments and rebuttal arguments in favor and against the advisory measure.

The City Council is requested to authorize the City Attorney to complete a final review and make any revisions necessary to both Resolutions prior to their submission to the San Bernardino County Registrar of Voters for the measures' inclusion on the ballot for the November 8, 2022 General Municipal Election.

In addition, the City Council is requested to consider conducting the first reading of Ordinance No. 22-999 imposing a General Business License Tax on Commercial Retail Sales of Cannabis, which is subject to final approval by the voters at the November 8, 2022 General Municipal Election, and setting a public hearing for the second reading and adoption of Ordinance No. 22-999 for Monday, August 15, 2022, at 7:00 p.m.

Copies of proposed Resolution Nos. 22-3374 and 22-3375 and Ordinance No. 22-999 are attached for City Council review and consideration.

BACKGROUND: In 2019, the City Council conducted a series of special meetings regarding compliance with Proposition 64 (Adult Use of Marijuana Act, or "AUMA") and the potential for a series of draft ordinances, collectively known as the Medicinal and Adult-Use Cannabis Regulation and Safety Law (MAUCRSL) of the City of Montclair regulating commercial cannabis activities in the City of Montclair. The special meetings were conducted to present the City Council with concepts contained in the draft ordinances and to determine if the City Council desired to proceed with public hearings and possible adoption of said ordinances.

At the conclusion of the series of special meeting, the City Council elected to table the draft ordinances in order to further evaluate the regulation of commercial cannabis activities in the City of Montclair given the nascent nature of the cannabis industry in the State, provide City staff with the opportunity to develop appropriate tax and fee-based revenue scenarios; and survey likely voters on the level of support for legalized cannabis.

Since concluding the series of special meetings, staff continued monitoring the regulation and evolution of the commercial cannabis industry at both the state and local levels, paying close attention to agencies that have chosen to allow commercial cannabis activities to occur in their respective jurisdictions.

At the March 7, 2022 meeting of the City Council, staff received direction to conduct a public opinion survey focusing on cannabis-related issues including the viability of a commercial cannabis tax measure on the ballot of the November 2022 election, and to hire a firm to conduct such a public opinion survey. The City Council approved Agreement No. 22-15 with Fairbank, Maslin, Maullin, Metz & Associates (FM3) for polling, educational, and outreach services to conduct the survey. The public opinion survey was conducted, in part, in response to past statements made by some members of the City Council to test the support of the public regarding cannabis legalization in the community. As discussed below, results from the public opinion survey demonstrate growing support for legalized cannabis sales in Montclair, with 60 percent indicating support. The survey was conducted between April 24 and May 16, 2022, and the results were presented at a Council Workshop held on July 18, 2022.

FM3 Survey Results

The survey was conducted from April 24 to May 16, 2022, among a random sample of 398 registered Montclair voters likely to vote in the election. The overall margin of error for the survey is ± 5.2 percent for the full sample survey, and ± 7.4 percent for the half sample survey. The results of the survey, conducted in both English and Spanish, were generally highly favorable, with a high level of satisfaction for the Montclair City government overall.

Respondents continue to believe that the City of Montclair is generally headed in the right direction with 57 percent of those agreeing, 21 percent disagreeing, and 21 percent unsure. When respondents were asked the same question in July of 2020, 61 percent believed the City of Montclair was generally headed in the right direction, with 17 percent disagreeing, and 22 percent unsure. As such, over six-in ten respondents continue to believe things are headed in the right direction in the City of Montclair.

Since July 2020, the percentage of those respondents who believe the City of Montclair has a great need for funding has increased by two percentage points from 74 percent in July 2020 to 76 percent in April-May 2022.

There is a decrease in the percentage of residents who know that it is illegal to sell cannabis products in the City of Montclair with 16 percent saying that it is legal to sell cannabis, 27 percent saying not it is not legal to sell cannabis, and 56 percent unsure.

Overall support for allowing business to sell cannabis products in Montclair has increased, from 54 percent in June/July of 2020 to 60 percent in April/May of 2022.

When asked the following sample ballot question, 70 percent indicated some level of affirmative support of the measure, with more than 40 percent indicating they would definitely vote “yes” on the measure, giving the measure the threshold needed to pass (50 percent plus 1) across all household income groupings:

Shall the measure to fund Montclair’s services such as supporting public safety; recruiting/retaining firefighters, paramedics/police; preventing thefts/property crimes; repairing streets/potholes; helping retain/attract businesses/jobs; addressing homeless; for general government use by taxing cannabis businesses’ gross receipts not exceeding 10% on retail, delivery, cultivation, manufacturing/testing; raising approximately \$3,500,000 annually, until ended by voters, requiring audits, spending disclosure, funds used locally, cannabis businesses follow laws protecting public health/safety, be adopted?

70 percent, or seven-in ten, of the voters are or lean in favor of the measure, with over four-in-ten indicating they would definitely vote yes and 23 percent indicating they would vote no.

Likely voters were also asked to rank, by importance, forty different categories of City-provided services. Services of priority interest to likely voters include the following:

1. Maintaining 911 emergency and public safety response — 95 percent support
2. Maintaining 911 emergency police and fire response — 94 percent support
3. Keeping communities safe — 93 percent support
4. Protecting local drinking water sources — 91 percent support. The City’s responsibilities and efforts include the following:
 - a. Water Quality Management Plans (WQMPs) — municipalities, not water agencies, are responsible for mandating developers design WQMPs for their projects. The purpose of a WQMP is to achieve a level of storm water runoff pollution prevention and abatement that would ensure the health of local waterways, water resources, rivers, streams, lakes, aquifers, oceans

and beaches. The WQMP prescribes post-construction Best Management Practices (BMPs) for the property to accomplish this goal. Generally, all new development/redevelopment projects require a WQMP. Exceptions may be available for small projects unless the City determines that the project may result in a discharge of significant levels of a pollutant into a tributary to water drainage systems.

- b. National Pollutant Discharge Elimination System (NPDES) — NPDES is a permit program established in 1972 by the Clean Water Act (CWA). The program is intended to regulate point sources of pollution discharge in the U.S. to address pollution to water sources. The NPDES program controls pollution in two ways: with water quality-based limits and technology-based limits. The U.S. Environmental Protection Agency (EPA) administers, enforces, and oversees the NPDES permit program; however, 47 states and one territory, including California, administer, enforce and oversee NPDES standards within their borders, delegating responsibilities to local governments, like Montclair, to implement and perform many of the permitting, administrative, and enforcement aspects of the NPDES program.
- c. Zoning — local governments protect local water sources through zoning and adoption of water management ordinances and land use controls. Local governments like Montclair develop zoning requirements to ensure that businesses using hazardous materials are not located near water supplies, implement runoff containment programs, implement water conservation measures including low water volume-use fixtures and micro-spray irrigation systems, the use of drought tolerant landscape palettes, and establish riparian buffers, the latter including land use controls such as acquisition or conservation easements. However, no one level of government can protect local water sources on their own. Instead, it takes a cooperative effort between federal, state and local government partners, watershed groups and landowners to achieve protection of local water sources.
- d. Street sweeping — Montclair's weekly street sweeping program removes debris and contaminants from City streets to prevent their entry into storm water systems.
- e. Contract with Inland Empire Utility Agency (IEUA) for sewage (effluent) treatment — the City's contract with IEUA provides for the treatment of effluent and its reintroduction into the water cycle either for use as reclaimed water for non-potable uses, or for natural percolation treatment to replenish potable water sources. The City, along with its partner water agency, Monte Vista Water District, reintroduces recycled water to the community for landscape irrigation and other non-potable uses, thereby preserving local water sources. Montclair has also installed, and is expanding the installation of recycled water distribution lines through the community to conserve potable water by establishing reliance on recycled water for landscape irrigation and other non-potable water uses.
- f. Support for Chino Basin Water Conservation District (CBWCD) — Montclair is a partner agency with the CBWCD for the preservation of percolation basins to reintroduce water to underground aquifers. In the last two decades, Montclair has been the lead agency in protecting the CBWCD from proposed takeovers by the IEUA. Montclair also regularly works with the

CBWCD in the introduction of low-water-use plant palettes in the community.

5. Preventing car theft and home break-ins — 91 percent support
6. Preventing theft and property crimes — 91 percent support
7. Helping retain local businesses and jobs — 91 percent support
8. Repairing streets and potholes — 89 percent support
9. Marinating youth and anti-gang programs — 89 percent support
10. Retaining and recruiting firefighters and paramedics — 88 percent support

Based on the above, it appears that quality of life issues (well-maintained streets, safe and clean public areas and neighborhoods, and investments that strengthen and improve the community, improve property values, and make the City a desirable place to live, work and play), maintaining and improving public safety, keeping crime down, investing in the local economy, protecting long term financial stability, and maintaining afterschool and youth programs are reasons voters likely cited in support of a November Cannabis Business License Tax Measure.

FM3 concluded the following:

1. Slightly less than six-in-ten have a favorable view of the direction of the City.
2. Perceptions of the City's need for additional funding remain high, with almost four-in-ten saying there is a great need.
3. Less than two-in-ten are aware that it is illegal at this time to sell cannabis products in the City of Montclair.
4. Overall support for the legalization of cannabis has increased since 2020 to six-in-ten voters.
5. The potential gross receipts tax measure on all forms of cannabis businesses appears viable at this time.
6. Roughly seven-in-ten voters would vote yes on the measure, with those saying they would definitely vote yes increasing five percentage points from 40 to 45 percent after hearing more about the measure.
7. Overall support declines nine percentage points, from 72 to 63 percent, after hearing critical statements — but remains above the simple majority threshold needed for passage.
8. High percentage of voters prioritize using funds for maintaining public safety response; protecting local drinking water sources; helping retain local businesses and jobs; and repairing streets and potholes.
9. Maintaining City funded youth programs to keep local kids off the streets and out of trouble; pushing black market cannabis businesses out of the City and replacing them with a regulated business that contributes their fair share to City services are among the leading reasons to support the measure.

In addition to FM3's demonstration of local support for the legalization and taxing of cannabis, national polling continues to demonstrate growing support for the legalization of cannabis at both the federal and state levels.

The most recent series of national polls, including the following, demonstrate that Americans of all genders, education levels, racial groups, age, and political affiliation

support federal and/or state legalization of medical/adult use of cannabis, with younger Americans the most supportive and moderates, liberals and independents more supportive than conservatives:

- [Marijuana | Economist/YouGov Poll \(July 2022\)](#)—60 percent support legalization for medical/recreational use
- [Cannabis Standards-SICPA.com \(June 2022\)](#) -78 percent support legalization of cannabis for medical/recreational use
- [YouGov America \(May 2022\)](#)—70 percent support legalization of cannabis for medical/recreational use
- [Marijuana and the American Public 2022-SSRS.com \(April 2022\)](#)—69 percent support legalization of cannabis for medical/recreational use
- [CBS News Poll - CBS News \(April 2022\)](#)—66 percent support legalization for medical/recreational use
- [CPEAR-National-Poll \(February 2022\)](#)—67 percent support legalization for medical/recreational use; and

Given the growing strength of support for cannabis legalization, as demonstrated by polling data, City staff has concluded that local ballot measures on the issues of legalization and taxing of cannabis would be viable when placed before the voters for the November 8, 2022, General Municipal Election.

At its regular meeting following the conclusion of the FM3 presentation, the City Council directed the City Manager to present, at the August 1, 2022, City Council meeting a resolution ordering the submission to the voters of the City of Montclair a measure to consider a general business license tax on commercial retail sales of cannabis at the General Municipal Election to be held on November 8, 2022

Cannabis Legalization in California

On November 8, 2016, Proposition 64 (the Adult-Use of Marijuana Act) was approved by California voters with 57.13 percent of the statewide vote and 53.1 percent of the vote in Montclair.

In addition to opening California for a legalized commercial cannabis marketplace, the AUMA provided additional protections for qualified patients, persons holding a valid identification card and their primary caregivers as it relates to possession and use of medicinal cannabis and medicinal cannabis products.

The AUMA also established clear law for the personal use, possession and cultivation of cannabis by private individuals, including authorizing a person 21 years of age or older to possess and use up to 28.5 grams of cannabis and up to eight (8) grams of concentrated cannabis, and to possess and process up to six (6) living cannabis plants and the cannabis produced by those plants, subject to certain restrictions, as specified by the AUMA and applicable state law and local ordinances.

Furthermore, under Title 16, Section 5416(d) of the Bureau of Cannabis Control regulations governing deliveries to a physical address, local governments have no authority to ban cannabis deliveries and the transportation of cannabis and cannabis products within their respective jurisdictions.

Current Legal Status of Cannabis in Montclair

In March of 2017, the Montclair City Council adopted Ordinance No. 17-968 adding Chapter 11.11 to Title 11 of the Montclair Municipal Code prohibiting uses related to medical cannabis dispensaries, cultivation and processing, commercial cannabis activities, delivery of cannabis and cannabis- related products, and outdoor cultivation of cannabis in the City.

The City's current Municipal Code expressly prohibits all personal cannabis outdoor cultivation, all nonmedical commercial cannabis cultivation, uses and services, and smoking and ingesting cannabis or cannabis products in public places within the City of Montclair.

Resolution Nos. 20-3374 (Cannabis Business License Tax Measure) and 20-3375 (Advisory Measure)

In order to place a measure on the November 8, 2022 ballot, the City Council must approve a resolution and the City Clerk must provide to the San Bernardino County Register of Voters a certified copy of the approved resolution no later than August 12, 2022.

It should be noted that a tax measure alone would not permit commercial cannabis activities in the City. The approval of commercial cannabis activity in the City would need to be a separate policy action of the City Council at a future date.

It should also be noted that inaction by the City Council on a cannabis tax measure or an enabling ordinance does not prohibit the delivery of cannabis, for adult or medical use, to Montclair by vendors operating outside of the City. Furthermore, the Governor signed Senate Bill 827 denying local agencies that prohibit commercial cannabis cultivation and sales from receiving law enforcement grants from state taxes on legal cannabis. The State Legislature is also considering other measures that would either penalize local agencies for failing to legalize commercial cannabis activities or impose requirements that would create opportunities for commercial cannabis sales statewide.

Pursuant to California Elections Code §9222, the Montclair City Council has authority to place local measures on the ballot to be considered at a Municipal Election.

On November 6, 1996, the voters of the State of California approved Proposition 218 (the "Right to Vote on Taxes Act"), an amendment to the State Constitution requiring that all general taxes which are imposed, extended or increased must first be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election. Pursuant to Proposition 218 (California Constitution, Article XIII C, section 2(b)), the general rule is that any local election for the approval of an increase to a general tax must be consolidated with a regularly scheduled general election for members of the governing body of the local government.

Pursuant to Government Code section 53724 (Proposition 62 and Revenue and Taxation Code §7285.9), a two-thirds ($\frac{2}{3}$) vote of all members of the City Council is required to place the Measure on the November 8, 2022 ballot.

As such, staff has prepared Resolution No. 22-3374, which would submit to the voters at the General Municipal Election to be held on November 8, 2022, the following measure:

Shall the measure funding general Montclair services, including supporting 911/police/fire response; preventing thefts/property crime; recruiting/retaining firefighters, paramedics; retaining local business/jobs; repairing streets/potholes; addressing homelessness; by taxing cannabis retail, delivery, cultivation, manufacturing/testing businesses at a rate of not more than 10% of gross receipts, raising about \$3,500,000 annually, until ended by voters, requiring audits, spending disclosure, funds used locally, cannabis businesses follow laws protecting public health/safety, be adopted?	YES
	NO

In addition, staff has prepared Resolution No. No. 22-3375, which would submit to the voters at the General Municipal Election to be held on November 8, 2022, the following advisory measure:

Shall the Montclair City Council consider and approve ordinances legalizing and licensing medical and adult-use cannabis businesses in the City of Montclair?	YES
	NO

It should be noted that the proposed advisory measure is a type of ballot measure in which citizens vote on a non-binding question. The difference between an advisory vote and any other type of ballot measure is that the outcome of the advisory measure will not result in a new, changed, repealed, or rejected law. The intent of the advisory measure is to allow voters to voice their preferences and allow legislatures or local governments the ability to gauge public opinion on the issue being presented.

Resolution Nos. 22-3374 and 22-3375 also include language that would allow staff to complete other legal requirements to facilitate the submission of the measures to the voters of Montclair. Resolution Nos. 22-3374 and 22-3375 include the following:

1. **Impartial Analysis.** The City Clerk is directed to transmit copies of the measure to the City Attorney, who shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure. The impartial analysis shall be filed by 12:00 p.m. on August 18, 2022.
2. **Arguments and Rebuttals.** Any and all members of the City Council, an individual voter who is eligible to vote on the measure, a bona fide association of citizens, or a combination of voters and associations, may file a written argument for or against the measure not exceeding 300 words, which shall be submitted to the City Clerk no later than 12:00 p.m. on August 18, 2020.

Rebuttal arguments not exceeding 250 words concerning this measure shall be submitted to the City Clerk no later than 6:00 p.m. on August 25, 2022.

3. **Public Examination.** The impartial analysis of, and the arguments and rebuttals for and against the measure will be available for public examination for ten (10) calendar days following their respective filing deadlines prior to being submitted for printing in the voter information guide.

Ordinance No. 22-999 – Montclair Cannabis Business License Tax

On November 6, 1996, the voters of the State of California approved Proposition 218

(the “Right to Vote on Taxes Act”), an amendment to the State Constitution requiring that all general taxes which are imposed, extended or increased must first be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election.

Pursuant to Proposition 218 (California Constitution, Article XIII C, section 2(b)), the general rule is that any local election for the approval of an increase to a general tax must be consolidated with a regularly scheduled general election for members of the governing body of a local government.

Staff recommends the City Council consider submitting a proposed General Business License Tax on Commercial Retail Sales of Cannabis to the voters at the November 8, 2022 General Municipal Election. If approved by a majority of the City’s voters at that election, the proceeds of the proposed general tax on gross receipts of cannabis businesses may be spent on any lawful general fund City purpose.

Proposed Ordinance No. 22-999 would establish the structure and procedures for the implementation of the "Montclair Cannabis Business License Tax" and subsequent other legal requirements.

Ordinance No. 22-999 contains the following sections:

- Title;
- Purpose;
- Definitions;
- Cannabis Business License Tax;
- Tax payment does not authorize activity;
- Cannabis tax is not a sales tax;
- Returns and remittances;
- Audits;
- Refunds;
- Tax administration
- Appeals;
- Consistency with business license tax; and
- Constitutionality and legality.

If approved by the voters, the tax measure would add Chapter 4.76, Cannabis Business License Tax to Title 4, of the Montclair Municipal Code and would allow for a tax on commercial cannabis businesses to raise revenue for general fund purposes.

This measure would impose a gross receipts tax on the privilege of conducting the following activities within the City’s jurisdiction: transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, selling, delivering, distributing, or testing cannabis or cannabis products by commercial cannabis businesses in the City of Montclair.

The tax would be imposed on gross receipts of commercial cannabis businesses up to a maximum of ten percent.

The proposed measure seeks voter approval for a maximum tax of ten percent of gross receipts. Once approved, the City Council would have the power to implement a lower tax rate than the maximum rate of ten percent and/or establish differing tax rates for each of different categories of cannabis business activities.

The City Manager would be responsible for adopting administrative policies to promulgate rules, regulations, and procedures to implement and administer the tax to ensure the efficient and timely collection. The City Manager would also be responsible for organizing an independent audit of the cannabis taxes to verify that tax revenues have been properly collected and expended in accordance with will of the voters.

If Ordinance No. 22-999 is approved by the City Council, with subsequent approval by the voters of the City of Montclair at the General Municipal Election to be held on November 8, 2022, the "Montclair Cannabis Business License Tax" would be operative beginning 10 days after certification of the November 8, 2022 General Municipal Election.

November 8, 2022, Municipal Election Ballot Timeline.

Table 1, below, identifies the San Bernardino County Election deadlines related to submission of a ballot measure appearing on the November 8, 2022, Municipal Election:

**Table 1
November 8, 2022
Municipal Election Ballot Measure Timelines**

EVENT	DATE
Assignment of Measure Letters by San Bernardino County Registrar of Voters	Monday, August 15, 2022 11:00 a.m.
Deadline to Withdraw Measure	Wednesday, August 17, 2022 5:00 p.m.
Impartial Analysis Submission Deadline	Monday, August 22, 2022 12:00 p.m.
Argument Submission Deadline	Monday, August 22, 2022 12:00 p.m.
Rebuttal Submission Deadline	Thursday, August 25, 2022 6:00 p.m.
End of 10-day Public Examination Period for Arguments	Thursday, September 1, 2022 12:00 p.m.
End of 10-day Public Examination Period for Rebuttals	Monday, September 5, 2022 5:00 p.m.

FISCAL IMPACT: Preparation of two ballot measures will entail publication and election consolidation costs through the San Bernardino County Registrar of Voters. General Fund costs assessed by the San Bernardino County Registrar of Voters are not expected to exceed \$50,000 for both the tax measure and advisory measure.

Voter approval of the proposed General Business License Tax on Commercial Retail Sales of Cannabis Measure would produce an estimated annual revenue stream of \$3.5 million.

Funds generated by the General Business License Tax on Commercial Retail Sales of Cannabis Measure would be deposited in the City's General Fund and used to support, maintain and improve general government services including, but not limited to the following:

- Maintaining 911 emergency and public safety response
- Keeping the community safe
- Helping to protect local drinking water sources
- Helping retain local businesses and jobs
- Maintaining and improving the City's infrastructure
- Protecting long-term financial stability
- Maintaining gang prevention programs for at-risk youth
- Maintaining senior discount programs for municipal services
- Providing for emergency funds to assist with public health, safety and welfare
- Other General Fund program expenditures as determined by the City Council

RECOMMENDATION: Staff recommends the City Council take the following actions:

1. Adopt Resolution No. 20-3374 ordering the submission to the voters of the City of Montclair a measure to consider a general business license tax on commercial retail sale of cannabis at the General Municipal Election to be held on Tuesday, November 8, 2022; directing the City Attorney to prepare an impartial analysis of the measure; and providing for the filing of arguments and rebuttal arguments in favor of and against the measure; and
2. Adopt Resolution No. 20-3375 ordering the submission to the voters of the City of Montclair an advisory measure for the City Council to consider and approve ordinances legalizing and licensing medical and adult-use of cannabis businesses in the City of Montclair to be held on Tuesday, November 8, 2022; directing the City Attorney to prepare an impartial analysis of the advisory measure; and providing for the filing of arguments and rebuttal arguments in favor of and against the advisory measure; and
3. Authorize the City Attorney to complete a final review of, and make any revisions necessary to, Resolution Nos. 22-3374 and 22-3375 prior to submission to the San Bernardino County Registrar of Voters for inclusion of the two measures on the ballot at the November 8, 2022 General Municipal Election; and
4. Conduct the first reading of Ordinance No. 22-999 adding Chapter 4.46 to Title 4 of the Montclair Municipal Code related to imposing a Cannabis Business License Tax (subject to final approval by the votes at the November 8, 2022 General Municipal Election); and
5. Set a public hearing for second reading and adoption of Ordinance No. 22-999 for Monday, August 15, 2022, at 7:00 p.m.

RESOLUTION NO. 22-3374

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ORDERING THE SUBMISSION TO THE VOTERS OF THE CITY OF MONTCLAIR A MEASURE TO CONSIDER A GENERAL BUSINESS LICENSE TAX ON COMMERCIAL RETAIL SALE OF CANNABIS AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE; AND PROVIDING FOR THE FILING OF ARGUMENTS AND REBUTTAL ARGUMENTS IN FAVOR OF AND AGAINST THE MEASURE

WHEREAS, the City of Montclair provides unmatched neighborhood services, including public safety through the Montclair Police and Fire Departments, repair and maintenance of streets and sidewalks, high-quality parks, community centers, family services and libraries services, seniors and youth programs, low-cost healthcare and education services, and community revitalization; and

WHEREAS, the City of Montclair imposes license taxes upon businesses in the City; and

WHEREAS, the Ordinance attached hereto as Exhibit "A" and incorporated herein by reference would impose a business license tax on persons engaged in commercial activity in the City involving cannabis products; and

WHEREAS, these business license taxes are imposed to raise revenue and not for regulation; and

WHEREAS, this measure is projected to raise an estimated \$3,500,000 annually for the City's General Fund and could be used to maintain and enhance City's existing services such as local public safety, maintaining 911 emergency, police and fire response times, street and infrastructure maintenance, assistance for the individuals experiencing homelessness, city-funded after-school and summer recreational programs which provide healthy alternatives for at-risk youth, keeping communities safe and clean, and quality of life programs; and

WHEREAS, all revenue raised by this measure will be used locally to benefit Montclair residents and businesses, and cannot be used by other governmental agencies or districts; and

WHEREAS, this measure only applies to individuals or businesses engaging in the cannabis business and does not increase other taxes on Montclair residents or businesses within the City; and

WHEREAS, this measure as a general tax includes strict accountability requirements to make sure that the funds are placed in the City's General Fund and are used effectively and as promised including online and public disclosure of all spending; and

WHEREAS, the City Council may submit the Ordinance directly to the voters pursuant to Section 9222 of the California Elections Code; and

WHEREAS, at a properly noticed meeting on June 20, 2022 the City Council adopted Resolution No. 22-3359 to call a general election for November 8, 2022, at which it will submit to the qualified voters of the City the Ordinance to impose a general tax on commercial cannabis activity in the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Montclair as follows:

Section 1. Ballot Measure. Pursuant to the laws of the State of California applicable to general law cities, the City Council of the City of Montclair does hereby order submitted to the voters at the General Municipal Election to be held on November 8, 2022, the following question:

Shall the measure funding general Montclair services, including supporting 911/police/fire response; preventing thefts/property crime; recruiting/retaining firefighters, paramedics; retaining local business/jobs; repairing streets/potholes; addressing homelessness; by taxing cannabis retail, delivery, cultivation, manufacturing/testing businesses at a rate of not more than 10% of gross receipts, raising about \$3,500,000 annually, until ended by voters, requiring audits, spending disclosure, funds used locally, cannabis businesses follow laws protecting public health/safety, be adopted?	YES
	NO

This measure requires the approval of a simple majority (50% plus 1) of those voting and the full text of the referenced measure (Ordinance No. 22-999) is attached hereto as Exhibit "A" and incorporated into this Resolution by this reference.

Section 2. Impartial Analysis. The City Clerk is directed to transmit copies of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure. The impartial analysis shall include a statement indicating the Measure was placed on the ballot by the City Council. There shall be printed immediately below the impartial analysis, in not less than 10-point font bold type, the following: "The above statement is an impartial analysis of Ordinance No. 22-999. If you desire a copy of the ordinance, please call the elections official's office at (909) 625-9416 and a copy will be mailed at no cost to you." The impartial analysis shall be filed by 12:00 p.m. on August 22, 2022.

Section 3. Arguments and Rebuttals. Pursuant to Elections Code Section 9282(b), the City Council authorizes any and all members of its body, an individual voter who is eligible to vote on the measure, a bona fide association of citizens, or a combination of voters and associations, to file a written argument for or against the measure not exceeding 300 words regarding the City measure as specified above, which shall be submitted to the City Clerk no later than 12:00 p.m. on August 22, 2022.

Pursuant to Elections Code Section 9285, the City Council authorizes the filing of rebuttal arguments for and against measures in the Election. Rebuttal arguments not exceeding 250 words concerning this measure shall be submitted to the City Clerk no later than 6:00 p.m. on August 25, 2022. This Section 3 shall expire with the Election, and shall not authorize rebuttal arguments as to measures presented at any future election.

Section 4. Public Examination. Pursuant to Elections Code Section 9295, this Measure will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the voter information guide. The City Clerk shall post notice in the Clerk's office and City website (www.cityofmontclair.org) of the specific dates that the examination period will run.

Section 5. CEQA. The adoption of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code Section 21000 et. seq. ("CEQA") and 14 Cal. Code Reg. §15000 et. seq. ("CEQA Guidelines"). The noticing of a Municipal Election is not a project within the meaning of CEQA Guidelines Section 15378, subsection (b)(3).

Section 6. Certification. The City Clerk shall certify to the passage and adoption of this Resolution and its approval by the City Council and shall cause the same to be listed in the records of the City and entered into the book of original Resolutions; and shall file with the Board of Supervisors and the Registrar of Voters of the County of San Bernardino, California, a certified copy of this Resolution.

The City Clerk is authorized and directed to take all other steps necessary to conduct the election on the Measure and to cooperate with the County Elections Official to consolidate it with the November 8, 2022 Statewide General Election.

Section 7. Severability. If any section, subsection, sentence, clause, phrase or portion of this Resolution or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution or its application to other persons and circumstances. The City Council of the

City of Montclair hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

Section 8. Effective Date. This Resolution shall take effect immediately upon its adoption as a measure affecting an election.

APPROVED AND ADOPTED this XX day of XX, 2022.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3374 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2022, and that it was adopted by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Myrick
City Clerk

RESOLUTION NO. 22-3375

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ORDERING THE SUBMISSION TO THE VOTERS OF THE CITY OF MONTCLAIR, AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, AN ADVISORY MEASURE FOR THE CITY COUNCIL TO CONSIDER APPROVING THE LEGALIZATION AND PERMITTING/LICENSING OF MEDICAL AND ADULT USE COMMERCIAL CANNABIS BUSINESSES IN THE CITY OF MONTCLAIR, INCLUDING FOR THE RETAIL, DELIVERY, MANUFACTURING, CULTIVATION AND TESTING OF CANNABIS SUBJECT TO REGULATORY ORDINANCES TO BE ADOPTED BY THE MONTCLAIR CITY COUNCIL; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE ADVISORY MEASURE; AND PROVIDING FOR THE FILING OF ARGUMENTS AND REBUTTAL ARGUMENTS IN FAVOR OF AND AGAINST THE ADVISORY MEASURE

WHEREAS, the City of Montclair provides unmatched neighborhood services, including public safety through the Montclair Police and Fire Departments, repair and maintenance of streets and sidewalks, high-quality parks, community centers, family services and libraries services, seniors and youth programs, low-cost healthcare and education services, and community revitalization; and

WHEREAS, illegal and unregulated commercial cannabis activities represent a drain on valuable public resources, requiring diversion of resources away from other legitimate governmental purposes; and

WHEREAS, illegal and unregulated commercial cannabis activities generate crime, provide unsafe products to consumers, and contribute to juvenile delinquency; and

WHEREAS, Proposition 215, an initiated state statute, was approved by California voters on November 5, 1996, with 55.58 percent of the vote; and

WHEREAS, Proposition 215 legalized medical cannabis use in California; and

WHEREAS, in 2004, the California State Legislature passed the Medical Marijuana Program Act (MMPA) to clarify which specific practices with regard to medical cannabis were to be considered lawful in the state; and

WHEREAS, the MMPA:

- Established a voluntary statewide identification card system;
- Set limits on the amount of medical cannabis each cardholder could possess; and
- Created rules for the cultivation of medical cannabis by collectives and cooperatives; and

WHEREAS, in 2004, the California State Legislature passed the Medical Marijuana Program Act (MMPA) to clarify which specific practices with regard to medical cannabis were to be considered lawful in the state; and

WHEREAS, in January 2010, in *People v. Kelly* the California Supreme Court ruled that the state of California cannot, through the legislative process, impose a state limit on medical cannabis that is more restrictive than what is allowed under Proposition 215; and

WHEREAS, pursuant to Proposition 64, the **California Marijuana Legalization Initiative**, an initiated state statute (also known as the **Control, Regulate and Tax Adult Use of Marijuana Act**), was approved by California voters on November 8, 2016, with 57.13 percent of the vote; and

WHEREAS, Proposition 64:

- Legalizes cannabis under state law for use by adults 21 or older.
- Designates state agencies to license and regulate the cannabis industry, and the Bureau of Medical Cannabis Regulation (renamed the Bureau of

Cannabis Control) became responsible for regulating and licensing cannabis businesses.

- Counties and municipalities are empowered to restrict where cannabis businesses can be located, and local governments are allowed to completely ban cannabis establishments from their jurisdictions or "reasonably regulate" the personal growth, possession, and use of cannabis plants allowed by Proposition 64.
- Imposes a state excise tax of 15 percent on retail sales of cannabis, and state cultivation taxes on cannabis of \$9.25 per ounce of flowers and \$2.75 per ounce of leaves, with revenue from the taxes to be spent on drug research, treatment and health and safety grants addressing enforcement, testing, anti-drug programs, youth programs, and preventing environmental damage resulting from illegal cannabis production.
- Businesses are required to acquire a state license to sell cannabis for recreational use and local governments can also require businesses to obtain a local license.
- Businesses are not authorized to sell within 600 feet of a school, day care center, or youth center.
- Exempts medical cannabis from some taxation.
- Establishes packaging, labeling, advertising, marketing, safety and testing standards and restrictions for cannabis products.
- Prohibits marketing and advertising cannabis directly to minors.
- Allows local regulation and taxation of cannabis.
- Authorizes resentencing and destruction of records for prior cannabis convictions.

WHEREAS, pursuant to the Controlled Substances Act of 1970 the use and possession of cannabis remains illegal under federal law for any purpose, however, most states have legalized either or both the medical and recreational use of cannabis; and

WHEREAS, in May 2009, the U.S. Supreme Court declined to hear an appeal of a California state appellate ruling from 2008 that upheld Proposition 215 and concluded that California can decide whether to eliminate its own criminal penalties for medical cannabis regardless of federal law and despite a lawsuit filed by the counties of San Diego and San Bernardino objecting to Proposition 215 on the grounds that it required them to condone drug use that is illegal under federal law and that it required counties to issue identification cards to medical cannabis patients so those patients can identify themselves to law enforcement officials as legally entitled to possess small amounts of cannabis; and

WHEREAS, in August 2013 the Obama Administration/Department of Justice issued the "Cole Memo" which effectively authorized states that legalized cannabis to set up strict regulatory oversight of the industry, thereby conceding to each state the decision to implement their respective policy on cannabis; and

WHEREAS, currently:

- The medical use of cannabis is legal with a doctor's recommendation in 37 states, four out of five permanently inhabited U.S. territories, and the District of Columbia (D.C.).
- Eleven states have laws that limit the psychoactive compound tetrahydrocannabinol (THC) for the purpose of allowing access to products rich in cannabidiol (CBD).
- The recreational use of cannabis has been legalized in 19 states, Guam, the Northern Mariana Islands and Washington D.C., and another 12 states and the U.S. Virgin Islands have decriminalized its use.
- Commercial distribution of cannabis has been legalized in all jurisdictions where possession has been legalized, except for Washington D.C.

- Personal cultivation for recreational use of cannabis is allowed in all jurisdictions where cannabis has been legalized except for Washington State and New Jersey.

WHEREAS, currently, 31 of the 58 counties in California allow for commercial Medicinal/Adult-Use cannabis business operations in their unincorporated areas, including the following counties allowing commercial cultivation, manufacturing, and/or retail:

1. Alameda County
2. Calaveras County
3. Colusa County
4. Contra Costa County
5. Del Norte County
6. El Dorado County
7. Humboldt County
8. Imperial County
9. Inyo County
10. Lake County
11. Lassen County
12. Los Angeles County
13. Marin County
14. Mendocino County
15. Mono County
16. Monterey County
17. Nevada County
18. Riverside County
19. San Benito County
20. San Diego County
21. San Francisco County
22. San Joaquin County
23. San Luis Obispo County
24. San Mateo County
25. Santa Barbara County
26. Santa Cruz County
27. Sonoma County
28. Stanislaus County
29. Trinity County
30. Ventura County
31. Yolo County

WHEREAS, there are 539 cities and counties in California including 482 incorporated cities and, according to the Public Health Institute, an estimated 173 jurisdictions currently allow storefront sales of cannabis, and an additional 108 allow sales by delivery only; and

WHEREAS, in San Bernardino County, commercial cannabis activities are currently legal in Adelanto, Colton, Hesperia, Needles, San Bernardino, Victorville and, by recent press reports, Fontana; and

WHEREAS, in Riverside County commercial cannabis activities are legal in 20 of the county's 28 incorporated jurisdictions; and

WHEREAS, in Los Angeles County commercial cannabis activities are legal in 29 of the county's 88 incorporated jurisdictions; and

WHEREAS, the most recent series of national polls, including the following, demonstrate that Americans of all genders, education levels, racial groups, age, and political affiliation support federal and/or state legalization of medical/adult use of cannabis, with younger Americans the most supportive and moderates, liberals and independents more supportive than conservatives:

- [Marijuana | Economist/YouGov Poll \(July 2022\)](#)—60 percent support legalization for medical/recreational use
- [Cannabis Standards-SICPA.com \(June 2022\)](#) -78 percent support legalization of cannabis for medical/recreational use

- [YouGov America \(May 2022\)](#)—70 percent support legalization of cannabis for medical/recreational use
- [Marijuana and the American Public 2022-SSRS.com \(April 2022\)](#)—69 percent support legalization of cannabis for medical/recreational use
- [CBS News Poll - CBS News \(April 2022\)](#)—66 percent support legalization for medical/recreational use
- [CPEAR-National-Poll \(February 2022\)](#)—67 percent support legalization for medical/recreational use; and

WHEREAS, a survey commissioned by the Montclair City Council, and conducted by FM3 Research from April 24 to May 16, 2022, among a random sample of 398 registered Montclair voters, with a margin of error of ± 5.2 percent for the full sample survey and ± 7.4 percent for the half sample survey, conducted in both English and Spanish, demonstrated favorable support for the legalization of commercial cannabis businesses in Montclair, rising from 54 percent in June/July 2020 to 60 percent in April/May 2022, and 70 percent favorable support for the taxation of cannabis; and

WHEREAS, Resolution No. 22-3374, to be considered by the City Council at its August 1, 2022 meeting, provides for consideration of an Ordinance that would impose a business license tax on persons engaged in commercial activity in the City involving cannabis products, subject to voter approval of a ballot measure to be submitted to voters at the General Municipal Election to be held on November 8, 2022, asking the following question:

Shall the measure funding general Montclair services, including supporting 911/police/fire response; preventing thefts/property crime; recruiting/retaining firefighters, paramedics; retaining local business/jobs; repairing streets/potholes; addressing homelessness; by taxing cannabis retail, delivery, cultivation, manufacturing/testing businesses at a rate of not more than 10% of gross receipts, raising about \$3,500,000 annually, until ended by voters, requiring audits, spending disclosure, funds used locally, cannabis businesses follow laws protecting public health/safety, be adopted?	YES
	NO

This measure requiring the approval of a simple majority (50% plus 1) of those voting and the full text of the referenced measure (Ordinance No. 22-1003), is attached as Exhibit "A" to Resolution No. 22-3374 and incorporated therein by reference; and

WHEREAS, the business license taxes imposed by Ordinance No. 22-1003 are to raise revenue and are not for regulation; and

WHEREAS, the measure to impose business license taxes on cannabis is projected to raise an estimated \$3,500,000 annually for the City's General Fund and could be used to maintain and enhance City's existing services such as local public safety, maintaining 911 emergency, police and fire response times, street and infrastructure maintenance, assistance for the individuals experiencing homelessness, city-funded after-school and summer recreational programs which provide healthy alternatives for at-risk youth, keeping communities safe and clean, and quality of life programs; and

WHEREAS, the City Council may submit the Ordinance directly to the voters pursuant to Section 9222 of the California Elections Code; and

WHEREAS, at a properly noticed meeting on June 20, 2022 the City Council adopted Resolution No. 22-3359 to call a general election for November 8, 2022, at which it will submit to the qualified voters of the City the Ordinance to impose a general tax on commercial cannabis activity in the City; and

WHEREAS, to establish a regulatory program that provides for requirements related to the operation and permitting of commercial cannabis activities in the City of Montclair, the City Council may submit directly to voters pursuant to Section 9222 of the California Elections Code, an advisory measure on the legalization and permitting of

commercial cannabis activities in Montclair, subject to the Montclair City Council's adoption of regulatory ordinances.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Montclair as follows:

Section 1. Ballot Measure. Pursuant to the laws of the State of California applicable to general law cities, the City Council of the City of Montclair does hereby order submitted to the voters at the General Municipal Election to be held on November 8, 2022, the following advisory question:

Shall the Montclair City Council consider and approve ordinances legalizing and licensing medical and adult-use cannabis businesses in the City of Montclair?	YES
	NO

This advisory measure requires the approval of a simple majority (50% plus 1) of those voting.

Section 2. Impartial Analysis. The City Clerk is directed to transmit copies of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure. The impartial analysis shall include a statement indicating the Measure was placed on the ballot by the City Council. There shall be printed immediately below the impartial analysis, in not less than 10-point font bold type, the following: "The above statement is an impartial analysis of Ordinance No. 22-1003. If you desire a copy of the ordinance, please call the elections official's office at (909) 625-9416 and a copy will be mailed at no cost to you." The impartial analysis shall be filed by 12:00 p.m. on August 18, 2022.

Section 3. Arguments and Rebuttals. Pursuant to Elections Code Section 9282(b), the City Council authorizes any and all members of its body, an individual voter who is eligible to vote on the measure, a bona fide association of citizens, or a combination of voters and associations, to file a written argument for or against the measure not exceeding 300 words regarding the City measure as specified above, which shall be submitted to the City Clerk no later than 12:00 p.m. on August 18, 2022.

Pursuant to Elections Code Section 9285, the City Council authorizes the filing of rebuttal arguments for and against measures in the Election. Rebuttal arguments not exceeding 250 words concerning this measure shall be submitted to the City Clerk no later than 6:00 p.m. on August 25, 2022. This Section 3 shall expire with the Election, and shall not authorize rebuttal arguments as to measures presented at any future election.

Section 4. Public Examination. Pursuant to Elections Code Section 9295, this Measure will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the voter information guide. The City Clerk shall post notice in the Clerk's office and City website (www.cityofmontclair.org) of the specific dates that the examination period will run.

Section 5. CEQA. The adoption of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code Section 21000 et. seq. ("CEQA") and 14 Cal. Code Reg. §15000 et. seq. ("CEQA Guidelines"). The noticing of a Municipal Election is not a project within the meaning of CEQA Guidelines Section 15378, subsection (b)(3).

Section 6. Certification. The City Clerk shall certify to the passage and adoption of this Resolution and its approval by the City Council and shall cause the same to be listed in the records of the City and entered into the book of original Resolutions; and shall file with the Board of Supervisors and the Registrar of Voters of the County of San Bernardino, California, a certified copy of this Resolution.

The City Clerk is authorized and directed to take all other steps necessary to conduct the election on the Measure and to cooperate with the County Elections Official to consolidate it with the November 8, 2022 Statewide General Election.

Section 7. Severability. If any section, subsection, sentence, clause, phrase or portion of this Resolution or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent

jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution or its application to other persons and circumstances. The City Council of the City of Montclair hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

Section 8. Effective Date. This Resolution shall take effect immediately upon its adoption as a measure affecting an election.

APPROVED AND ADOPTED this XX day of XX, 2022.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3375 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2022, and that it was adopted by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Myrick
City Clerk

ORDINANCE NO. 22-999

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ADDING CHAPTER 4.76 TO TITLE 4 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO IMPOSING A CANNABIS BUSINESS LICENSE TAX (SUBJECT TO FINAL APPROVAL BY THE VOTERS AT THE TUESDAY, NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION)

WHEREAS, pursuant to California Elections Code §9222, the City Council has the authority to place local measures on the ballot to be considered at a Municipal Election; and

WHEREAS, on August 1, 2022, the City Council adopted Resolution No. 22-3374 ordering the submission to the voters of Montclair a measure to consider a general business license tax on commercial retail sale of cannabis at the General Municipal Election of November 8, 2022 (the "Measure"); and

WHEREAS, the City Council has reviewed the form and content of this Ordinance and by its adoption approves this Ordinance as the complete text of the Measure subject to approval by the voters of the City of Montclair.

NOW, THEREFORE, THE CITY COUNCIL AND THE VOTERS OF THE CITY OF MONTCLAIR HEREBY ORDAIN AS FOLLOWS:

SECTION I. Amendment to Code. Chapter 4.76 is hereby added to Title 4 of the Montclair Municipal Code with the following provisions:

CANNABIS BUSINESS LICENSE TAX

4.76.010. Title.

This chapter shall be referenced as the "Montclair Cannabis Business License Tax."

4.76.020. Purpose.

This chapter is adopted for the following purposes and shall be interpreted to accomplish them:

- A. To impose a tax on the privilege of conducting cannabis business in the city, under the state Medicinal and Adult-Use Cannabis Regulation and Safety Act, California Business and Professions Code section 26000, Proposition 64, approved by the voters in November 2016 and as amended to date ("MAUCRSA"), which legalized and regulates adult use of cannabis in California, and other applicable law as it now exists or may hereafter be adopted;
- B. To impose a general tax to generate revenues which may be used in the discretion of the City Council for any lawful purpose of the City;
- C. To specify the type of tax and rate of tax to be levied and the method of collection; and
- D. To comply with all requirements for imposition of a general tax.

This Chapter is enacted solely to raise revenue, not for regulation. It shall apply to all persons engaged in cannabis business in the City. The tax imposed by this chapter is a general tax under Article XIII C of the California Constitution.

4.76.030. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed to them by this section unless the context makes apparent another meaning was intended.

- A. "Cannabis" or "marijuana" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds of such plants. "Cannabis" also means cannabis as defined by Business and Professions Code section 26001, subdivision (f), the Health and Safety Code section 11018, and by other state law.

- B. "Cannabis accessory" is any device intended to aid in the use of cannabis or cannabis products which does not itself consist in all or part of cannabis or cannabis products and includes, without limitation, "cannabis accessories" as defined in Health and Safety Code section 11018.2 and by other state law.
- C. "Cannabis business" means the activity of any natural or legal person, business, or collective in the City relating to cannabis, including but not limited to cultivation (including nurseries), transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, delivery and sales (including both wholesale and retail sales) of cannabis, cannabis products, or cannabis accessories, whether or not carried on for gain or profit, whether for medical or adult use, and whether or not such business is licensed by the State. A cannabis business does not include any business the only relationship of which to cannabis or cannabis products is the production or sale of cannabis accessories.
- D. "Cannabis product" means any product containing cannabis or its derivatives, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles and products described in Section 11018.1 of the Health and Safety Code.
- E. "City Manager" means the city manager or his or her designee.
- F. "Collector" means the city manager or a person he or she charges to administer this Chapter.
- G. "Commercial cannabis cultivation" means cultivation conducted by, for, or as part of a cannabis business. Commercial cannabis cultivation does not include personal medical cannabis cultivation, or cultivation for personal adult use as authorized by the MAUCRSA, including Health & Safety Code section 11362.1 et seq., for which the individual receives no compensation whatsoever.
- H. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- I. "Delivery" means the transfer for any form of compensation of cannabis or cannabis products to a customer or caregiver at a location that is not a dispensary.
- J. "Dispensary" means a fixed place at which cannabis, cannabis products, or accessories for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including, without limitation, a dispensary that engages in delivery.
- K. "Distributor" means a person engaged in procuring cannabis and/or cannabis products for sale to a dispensary or to others engaged in retail sales of cannabis and/or cannabis products. "Distribution" means engaging in that conduct and a "distribution facility" is any real property, whether or not improved, used in such conduct.
- L. "Gross receipts," except as otherwise specifically provided in this chapter or by regulations authorized by this Chapter, has the meaning stated in section 4.02.010 of this Code.
- M. "Manufacturer" means a person who engages in the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
- N. "Person" means any individual, firm, partnership, corporation, company, association, joint stock association; city, county, state, or district; and includes any trustee, receiver, assignee, or other similar representative thereof.

4.76.040. Cannabis Business License Tax.

- A. There is hereby imposed on every person who engages in cannabis business in the City an annual cannabis business license tax in the amounts stated in this Section 4.76.040 or such lesser amounts as the City Council may from time to time establish.
- B. The City Council may, by resolution, implement a tax rate lower than the maximum rate established in subsection (C) of this section for all persons

engaged in cannabis business, or establish differing tax rates for different categories of cannabis business. The City Council may, by resolution, decrease or increase such tax rates without further voter approval provided the tax rate is not above the maximum tax rate established in subsection (C) of this section.

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

1. For every person who engages in commercial cannabis cultivation shall be subject to the maximum tax rate not to exceed ten percent (10%) of gross receipts.
2. For every person who engages in the operation of a testing laboratory for cannabis or cannabis products shall be subject to the maximum tax rate not to exceed ten percent (10%) of gross receipts.
3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) shall be subject to the maximum tax rate not to exceed ten percent (10%) of gross receipts.
4. For every person who engages in a cannabis distribution business for cannabis or cannabis products shall be subject to the maximum tax rate not to exceed ten percent (10%) of gross receipts.
5. For every person who engages in cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in Section 4.76.040 (C) (1), (2), (3) or (4), the maximum tax rate shall not exceed ten percent (10%) of gross receipts.

D. The City Council shall set the initial cannabis tax rates at zero dollars until such time as the City Attorney determines in writing that commercial cannabis activities in the City of Montclair are lawful either because the City Council has permitted commercial cannabis activities to occur in the City of Montclair or state or federal law has limited the City of Montclair's authority to forbid commercial cannabis activities from occurring.

4.76.050. Payment obligations.

Each person subject to a tax under this chapter shall pay that tax regardless of any rebate, exemption, incentive, or other reduction elsewhere in this code, except as required by state or federal law. Failure to pay such a tax shall be subject to penalties, fines and interest charges established under this Chapter and the City may resort to any or all other remedies available at law or in equity to enforce this chapter. No provision of this Chapter shall be interpreted to reduce a tax rate established under this chapter or otherwise reduce the taxes paid hereunder unless the provision specifically requires that reduction.

4.76.060. Tax payment does not authorize activity.

The payment of a tax imposed under this Chapter does not authorize the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter authorizes or implies the lawfulness of any activity connected with the distribution or possession of cannabis unless otherwise authorized and allowed in strict and full conformance with this code. Nothing in this Chapter is intended to authorize commercial cannabis activity.

4.76.070. Cannabis tax is not a sales tax.

The tax imposed by this Chapter is upon the privilege of doing business in the City. It is not a sales or use tax.

4.76.080 – Returns and remittances.

The tax imposed by this chapter shall be due and payable as follows:

- A. Each person owing tax under this Chapter shall provide a tax return to the city manager on or before the last business day of each month stating the tax owed for the preceding month and the basis of its calculation. The taxpayer shall remit the tax owed to the City Manager when the return is due.

- B. The City Manager may establish a form for tax returns submitted under this section and, if so, use of that form shall be mandatory.
- C. Tax returns and payments for all outstanding taxes, penalties and interest owed the city are immediately due upon cessation of business for any reason.
- D. Whenever the City Manager receives a payment, statement, report, request or other communication after the time this section prescribes for its receipt in an envelope postmarked by that time, the City Manager shall regard such payment, statement, report, request, or other communication as timely. If the due date falls on a day when city offices are not open for business, the due date shall be the last day before that date when city offices are open for business.
- E. Unless otherwise provided by this Chapter, the tax imposed by this chapter is delinquent if not paid by the due date specified in subsection (A) of this section.
- F. The City Manager need not send a bill or delinquency or other notice to any person subject to a tax imposed by this chapter and failure to send such bill or notice shall not affect the validity of any tax, interest or penalty due under this chapter.

4.76.090 – Audits.

The City Manager shall arrange for an annual independent audit of the receipts and expenditures of the taxes imposed by this chapter. He or she shall share that audit report with the City Council and make it available for public inspection.

4.76.100. Refunds.

- A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in this section.
- B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a cannabis business.
- C. Any person entitled to a refund of sums paid under this Chapter may ask the City to apply it as a credit against future obligations under this Chapter.
- D. If a tax, penalty, or interest imposed under this Chapter has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City, such amount shall be refunded to the person who paid it upon a written claim for refund filed with the City Manager within a year of the payment sought to be refunded.
- E. The collector may examine and audit all the books and business records of a refund claimant to determine entitlement to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of the claimant's books and business records.
- F. A sum erroneously paid under this chapter due to an error of the City shall be refunded to the claimant in full upon a claim filed within one year of the payment sought to be refunded. If an error is attributable to the claimant, the City may retain an amount established by resolution of the City Council to recover the City's cost to process the claim and refund the balance.

4.76.110. Tax administration.

- A. It shall be the duty of the City Manager to collect the taxes, penalties, and interests, and perform the duties this chapter requires.
- B. The City Manager may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent, and terms of this Chapter as he or she deems necessary to implement or clarify it or to aid in its enforcement. He or she shall give notice of those regulations as required for ordinances of the City Council and such regulations shall take effect upon such notice unless a particular regulation provides otherwise.
- C. The City Manager may take such administrative actions as needed to administer the tax, including but not limited to:
 - 1. Provide information about this Chapter to any taxpayer;

2. Receive and record all taxes remitted to the City under this Chapter;
3. Maintain records of taxpayer reports and taxes collected under this Chapter;
4. Assess penalties, fines and interest charges to taxpayers under this Chapter;
5. Determine amounts owed and enforce collection under this Chapter; and
6. Take such other reasonable steps as he or she deems appropriate to enforce this Chapter.

D. The City council may establish by ordinance or resolution penalties, fines and interest charges related to this chapter.

4.76.120. Appeals.

Any person aggrieved by any decision of the City under this Chapter may appeal to the City Council pursuant to the procedures described in Section 1.08.030 of this Code. The City Council may, but need not, appoint a hearing officer to decide appeals or to provide a recommended decision for the City Council's review. Judicial review of the City's final action on any such appeal shall be available under California Code of Civil Procedure section 1094.5.

4.76.130. Consistency with business license tax.

The City Council intends this Chapter to be enforced consistently with the balance of Title 4 of this Code and any rule or regulation promulgated under that title except as this chapter expressly requires to the contrary.

4.76.140 – Constitutionality and legality.

- A. The tax imposed under this Chapter is intended to be applied consistently with the United States and California Constitutions and applicable law. The tax shall not be applied to cause an undue burden upon interstate or inter-city commerce, a violation of the equal protection or due process clauses of those Constitutions, to constitute a special tax, or to violate any other provision of applicable law.
- B. Under California Constitution, Article XIII B, the appropriation limit for the City is hereby increased to the maximum extent over the maximum period of time allowed under law by the amount of the revenues generated by the tax imposed by this chapter.

SECTION II. Amendment. To the extent Article XIII C of the California Constitution allows, the City Council may amend this Ordinance without a vote of the people, except that voter approval shall be required for any amendment that would increase, within the meaning of Government Code section 53750, subdivision (h), the tax rate beyond the maximum rates this Ordinance authorizes.

SECTION III. CEQA. This Ordinance is exempt from the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 *et seq.*, because it can be seen with certainty that there is no possibility that its enactment would have a significant effect on the environment (Pub. Resources Code 21065, CEQA Guidelines 15378(b)(4), 15061(b)(3) and because the Ordinance involves the approval of government revenues to fund existing services (Pub. Resources Code 21080, subd. (b)(8); CEQA Guidelines 15273(a)(4). It does not make any commercial activity lawful nor commit the City to fund any particular activity.

SECTION IV. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The People of the City of Montclair declare that they would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase or portion of it, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions might be declared invalid or unconstitutional.

SECTION V. Effective Date. This Ordinance shall take effect, under Elections Code sections 9217 and 9122, 10 days after certification of its approval by a majority of those voting on the measure at the November 8, 2022 general municipal election.

SECTION VI. Certification. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

SECTION VII. Execution. The Mayor shall sign and the City Clerk shall attest to the adoption of this ordinance upon certification by the City Council of the results of the election approving this ordinance.

APPROVED AND ADOPTED this day of , 2022.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 22-999 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2022, and finally passed not less than five (5) days thereafter at a regular meeting on the XX day of XX, 2022, by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Myrick
City Clerk