

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 seven percent (7%) 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 seven percent (7%) 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 seven percent (7%) 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 seven percent (7%) 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 seven percent (7%) 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.

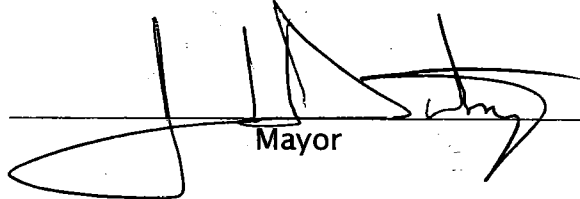
SECTION IV. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. 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 15th day of December, 2022.



Mayor

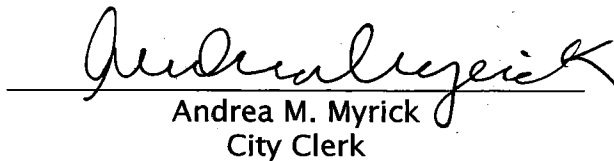
ATTEST:



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 1st day of August, 2022, and finally passed not less than five (5) days thereafter at a regular meeting on the 15th day of August, 2022, by the following vote, to-wit:

AYES: Lopez, Martinez, Johnson, Ruh, Dutrey
NOES: None
ABSTAIN: None
ABSENT: None



Andrea M. Myrick
City Clerk