

ORDINANCE NO. NS-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING CERTAIN SECTIONS OF ARTICLE XIII OF CHAPTER 18 OF THE SANTA ANA MUNICIPAL CODE PERTAINING TO MEDICINAL MARIJUANA TO UPDATE DEFINITIONS TO COMPLY WITH STATE LAW AND ENSURE CONSISTENCY WITH CHAPTER 40 OF THE MUNICIPAL CODE, AND AMENDING ARTICLE XII, SECTION 21-127 OF CHAPTER 21 OF THE SANTA ANA MUNICIPAL CODE INCREASING THE TAX ON MEDICINAL RETAIL MARIJUANA BY ONE PERCENT, FROM FIVE PERCENT TO SIX PERCENT

THE CITY COUNCIL OF THE CITY OF SANTA ANA HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. On November 4, 2014, Santa Ana voters approved Santa Ana's Medical Marijuana Regulatory Program ordinance ("Measure BB") allowing up to twenty (20) medical marijuana retail cannabis collectives/cooperatives ("dispensaries").
- B. Following the adoption of Measure BB, the provisions of the measure were codified in Chapters 18 and 21 of the Santa Ana Municipal Code. The City also established an implementation plan, enforcement program, administrative policies, and best practices.
- C. In May 2016 and early 2017, following initial implementation of the ordinance, the City held a roundtable discussion that invited stakeholders, dispensary owners, and members of the medical marijuana industry to meet with City staff regarding the implementation of Measure BB. Participants of the roundtable discussions voiced opinions on various aspects of the regulatory program and provided their recommendations for future policy level consideration.
- D. On June 20, 2017, the City Council approved amendments to Chapter 18 to streamline Measure BB and create more business-friendly conditions for the existing collectives/cooperatives.

- E. Further modifications to amend Chapter 18 and Chapter 21 are currently proposed to update certain definitions to comply with state law and ensure consistency with the newly adopted Chapter 40 (Commercial Cannabis).
- F. The proposed amendment includes increasing the tax on medicinal retail marijuana. Measure BB authorized a business license tax rate of up to ten percent (10%) of the gross receipts generated from each collective/cooperative. The proposed ordinance increases the tax from the initial rate of five percent (5%) to six percent (6%) as permitted by Measure BB.
- G. All provisions of the Santa Ana Municipal Code which are repeated herein are repeated solely in order to comply with the provisions of section 418 of the Charter of the City of Santa Ana. Any such restatement of existing provisions of the Code is not intended, nor shall it be interpreted, as constituting a new action or decision of the City Council, but rather such provisions are repeated for tracking purposes only in conformance with the Charter.

Section 2. Pursuant to the California Environmental Quality Act ("CEQA") and the state CEQA Guidelines, the adoption of this Ordinance is exempt from CEQA review pursuant to California Code of Regulations section 15061(b)(3), which is applicable if it can be seen with certainty that there is no possibility that the project may have a significant effect on the environment. As a result, a Notice of Exemption will be filed upon the adoption of this ordinance.

Section 3. Section 18-611 of Article XIII of Chapter 18 of the Santa Ana Municipal Code is hereby amended to read in full as follows:

Sec. 18-611. - Definitions. (Not in alphabetical order)

- (a) "Cultivation" and/or "Cultivate" shall mean the planting, growing, harvesting, drying, curing, grading or trimming of one (1) or more marijuana plants or any part thereof, as set forth in Business and Profession Code § 26001 (I) as amended from time to time.
- (b) "Medical marijuana collective" or "cooperative" or "collective" means any facility or location where medical marijuana is made available and/or distributed by or to one (1) or more of the following: a primary caregiver, a qualified patient or a person with an identification card in strict accordance with California Health and Safety Code Section 11362.5 et seq., as sometimes amended. This term shall include any legal form of business recognized in the State of California. A "medical marijuana collective" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed

pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

- (c) "Identification card" shall have the same definition as that contained in Health and Safety Code § 11362.7 et seq., as sometimes amended.
- (d) "Manager" means any person responsible for the establishment, organization, supervision, or oversight of the operation of a Collective, including but not limited to members who perform the functions of president, vice-president, director, operating officer, financial officer, secretary, or treasurer. Ability to control one (1) or more of the following functions shall be prima facie evidence that such person is a manager:
 - (1) To hire, select, or separate employees or staff, including volunteers;
 - (2) To acquire facilities, furniture, equipment or supplies other than occasional replenishment of stock;
 - (3) To disburse funds of the business other than occasional expenditures for replenishment of stock; or
 - (4) To make, or participate in making, policy decisions relative to the operations of the business.
- (e) "Marijuana" shall have the same definition as that contained in Health and Safety Code § 11018 as sometimes amended.
- (f) "Medical marijuana" shall have the same definition as that contained in Health and Safety Code § 11362.5 et seq., as sometimes amended.
- (g) "Primary caregiver" shall have the same definition as that contained in Health and Safety Code § 11362.5 and 11362.7, as sometimes amended.
- (h) "Qualified patient" shall have the same definition as that contained in Health and Safety Code § 11362.5 as sometimes amended.
- (i) "Private Residence" shall have the same definition as that contained in Health and Safety Code sections 11362.2(5) and 17922. A recreational vehicle does not constitute a lawfully established structure for the purposes of this article.
- (j) "Premises" means a single, legal parcel of property. Where contiguous legal parcels under common ownership or control, such contiguous legal parcels shall constitute a single "premises" for purposes of this chapter.
- (k) "Parcel" means property assigned a separate parcel number by the Orange County assessor.

- (l) "Marijuana Products" shall have the same definition as that contained in Health and Safety Code section 11018.1.
- (m) "Marijuana Accessories" shall have the same definition as that contained in Health and Safety Code section 11018.2.
- (n) "Personal Cultivation" shall mean the planting, growing, harvesting, drying, curing, grading or trimming of marijuana plants for personal use within a private residence or accessory structure to a private residence.
- (o) "Commercial Cultivation" shall mean the planting, growing, harvesting, drying, curing, grading or trimming of marijuana plants in any structure other than a private residence.
- (p) "Outdoor Cultivation" shall mean the planting, cultivating, growing, harvesting, drying, curing, grading or trimming of marijuana plants in any location within the City of Santa Ana that is not within a fully enclosed and secure structure.
- (q) "Fully enclosed and secure structure" means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors.
- (r) "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined to be authorized by the State of California, or any of its departments or divisions, to qualified patients and their caregivers. "Delivery" also includes the use by a dispensary of any technology platform owned, controlled, and/or licensed by the dispensary, or independently licensed by the State of California under the State law (as amended from time to time), that enables anyone to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products. For the purposes of this article, "delivery" does not include distribution or purchase of cannabis from a licensed cultivator, and cannabis products from a licensed manufacturer, for sale to a licensed dispensary or a wholesale establishment.
- (s) "Dispensary" means a premises where medical cannabis or medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to Business and Professions Code § 19340, medical cannabis and medical cannabis products as part of a retail sale.
- (t) "Responsible person" means any of the following:
 - (1) A person who causes a Code violation to occur.
 - (2) A person who maintains or allows a Code violation to continue, by his or her action or failure to act.

(3) A person whose agent, employee, or independent contractor causes a Code violation by its action or failure to act.

(4) A person who is the owner of, and/or a person who is a lessee or sub lessee with the current right of possession of, real property where a property-related Code violation occurs.

(5) A person who is the on-site manager of a business who normally works daily at the site when the business is open and is responsible for the activities of such premises.

For the purposes of this section "person" includes a natural person or legal entity, and the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity.

(u) "Distribution" means the procurement, sale and transport of cannabis and cannabis products between entities licensed pursuant to the Medicinal and Adult-Use of Cannabis Regulation and Safety Act, and any subsequent State of California legislation regarding the same.

Section 4. Section 18-613 of Article XIII of Chapter 18 of the Santa Ana Municipal Code is hereby amended to read in full as follows:

Sec. 18-613. - Operating Standards.

- (a) At all times the collective is open, a collective shall provide at least one security guard who is licensed, possesses a valid Department of Consumer Affairs "security guard card", and has a valid Santa Ana Business License. In the event that the security guard is employed by an outside security guard company; such security guard company shall maintain a valid Santa Ana Business License.
- (b) The security guard and collective personnel shall monitor the site and the immediate vicinity of the site to assure that patrons immediately leave the site and not consume medical marijuana in the vicinity of the collective or on the property or in the parking lot.
- (c) Exterior signage shall comply with Article XI of Chapter 41 of the Santa Ana Municipal Code. Interior signage or advertising may not be visible from the exterior. Collectives and dispensaries must comply with the advertising and marketing provisions of Business and Professions Code §§ 26150-26155.
- (d) No recommendations from a doctor for medical marijuana shall be issued on-site.
- (e) There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol, tobacco or marijuana by patrons.
- (f) Hours of operation shall be limited to: 7:00 a.m. to 11 p.m. daily. No licensed dispensary/collective shall be open to the public between the hours of 11:01 p.m. and 6:59 a.m. of any day.

- (g) The property shall provide an air treatment system with sufficient odor absorbing ventilation and exhaust systems so that odor generated inside the location is not detected outside the building, anywhere on adjacent property or public rights-of-way, or within any other unit located within the same building as the collective if the use only occupies a portion of a building.
- (h) A collective shall only dispense medical marijuana to qualified patients and their caregivers as defined by California Health and Safety Code § 11362.5 (Proposition 215). This shall include possession of an original valid doctor's recommendation, not more than one (1) year old, for medical marijuana use by the patient.
- (i) A collective shall notify patrons of the following both verbally and through posting of a sign in a conspicuous location:
 - (1) Use of medical marijuana shall be limited to the patient identified on the doctor's recommendation. Secondary sale, barter or distribution of medical marijuana is a crime and can lead to arrest.
 - (2) That loitering on and around the collective site is prohibited by California Penal Code § 647(e) and that patrons must immediately leave the site and not consume medical marijuana in the vicinity of the collective or on the property or in the parking lot.
 - (3) Forgery of medical documents is a felony crime.
 - (4) A warning that patrons may be subject to prosecution under federal marijuana laws.
 - (5) That the use of medical marijuana may impair a person's ability to drive a motor vehicle or operate machinery.
- (j) A collective shall not provide marijuana to any individual in an amount not consistent with personal medical use.
- (k) All agents, private security officers or other persons acting for or employed by a collective shall display a laminated identification badge at least 2" x 2" in size, issued by the collective. The badge, at a minimum, shall include the collective's "doing business as" name and license number, the employee's first and last name, and a color photo of the employee that shows the full front of the employee's face.
- (l) No one under twenty-one (21) years of age shall be permitted to enter establishment, unless such person is a qualified patient and is accompanied by his or her primary caregiver, licensed attending physician, parent(s) or documented legal guardian.
- (m) A collective shall provide the name and phone number of an on-site staff person to the police department and the Code Enforcement Division of the Planning and Building Agency for notification if there are operational problems with the establishment.
- (n) Each collective owner, operator(s) and employees shall complete a criminal background check and wear a visible photo ID at all times during operating hours.

Owners, operator(s), employees, managers or volunteers may not have been convicted of, or pleaded guilty/no-contest to a felony or misdemeanor drug charge within the past four (4) years; nor shall they be a person required to register as a controlled substance offender pursuant to Health & Safety Code section 11590.

- (o) Marijuana shall not be grown or cultivated at collective sites, except that cuttings of the marijuana plant may be kept or maintained on-site for distribution to qualified patients and primary caregivers as follows:
 - (1) The cuttings shall not be utilized by a collective as a source for the provision of marijuana for consumption on-site, however, upon provision to a qualified patient or primary caregiver, that person may use the cuttings to cultivate marijuana plants off-site for their own use and they may also return marijuana from the resulting mature plant for distribution by the collective.
 - (2) For the purposes of this paragraph, the term "cutting" shall mean a rootless piece cut from a marijuana plant, which is no more than six (6) inches in length, and which can be used to grow another plant in a different location.
- (p) A collective shall comply with applicable provisions of the California Health and Safety Code §§ 11362.5 through 11362.83, inclusive.
- (q) If food is distributed, the collective shall comply with all relevant state laws and city and/or County ordinances pertaining to the preparation, distribution and sale of food.
- (r) The location, interior and exterior, shall be monitored at all times by web-based closed-circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime anywhere on or adjacent to the location. The recordings shall be maintained for a period of not less than ninety (90) days. The police department may request the recordings in connection with an investigation. If the recordings are not voluntarily provided, the police department may seek a warrant or court order for the recordings.
- (s) The location shall have a centrally-monitored fire and burglar alarm system which shall include all perimeter entry points and perimeter windows and the building or the portion of the building where the collective is located shall contain a fire-proof safe or fire-proof filing cabinet and include a safety and security plan.
- (t) Reserved.
- (u) Reserved.
- (v) If the collective operator is not the owner of the property where the collective is to operate, the operator shall provide evidence that the property owner(s) consent to the operation of a collective on the property.
- (w) Collectives must obtain and maintain a valid City business license at all times as a condition for receiving, renewing, and maintaining their regulatory safety permit.

- (x) Occupancy shall not exceed that required under the Uniform Building Code and Uniform Fire Code, and the maximum occupancy load shall be posted at the main entrance.

Section 5: Section 18-617.2 of Article XIII of Chapter 18 of the Santa Ana Municipal Code is hereby amended to read in full as follows:

Sec. 18-617.2. - Medical marijuana collective—Regulatory permit application process.

- (a) Any Medical Marijuana Collective desiring a regulatory safety permit required by this article shall, prior to initiating operations and after receiving notice of its successful registration under section 18-617.1 as being on the RSP Eligibility List, must complete and file a Regulatory Safety Permit Application to the Director of the Planning and Building Agency or designee on a form supplied by the Planning and Building Agency. The application shall be filed together with a nonrefundable fee as established by resolution of the City Council, to defray the cost of investigation required by this article. The application shall contain all of the following:
 - (1) The address of the property where the proposed Medical Marijuana Collective(s) will operate;
 - (2) A site plan describing the property with fully dimensioned interior and exterior floor plans including electrical, mechanical, plumbing, and disabled access compliance pursuant to Title 24 of the State of California Code of Regulations and the federally mandated Americans with Disabilities Act;
 - (3) Exterior photographs of the entrance(s), exits(s), street frontage(s), parking, front, rear and side(s) of the proposed property;
 - (4) Photographs depicting the entire interior of the proposed property;
 - (5) If the property is being rented or leased or is being purchased under contract, a copy of such lease or contract;
 - (6) If the property is being rented or leased, written proof that the property owner, and landlord if applicable, were given notice that the property will be used as a Medical Marijuana Collective, and that the property owner, and landlord if applicable, agree(s) to said operations;
 - (7) The name, address, telephone number, title and function(s) of each manager, employee, volunteer, etc;
 - (8) For each manager, employee, volunteer, a fully legible copy of one valid government issued form of photo identification, such as State Driver's License or Identification Card;

- (9) If the Medical Marijuana Collective is a corporation, a certified copy of the Collective's Secretary of State Articles of Incorporation, Certificate(s) of Amendment, Statement(s) of Information and a copy of the Collective's Bylaws;
 - (10) If the Medical Marijuana Collective is an unincorporated association, a copy of the Articles of Association;
 - (11) The name and address of the applicant's current agent for Service of Process;
 - (12) A copy of the applicant's Board of Equalization Seller's Permit;
 - (13) A copy of the Medical Marijuana Collective Operating Standards, listed in section 18-613, containing a statement dated and signed by the responsible party on-site stating under penalty of perjury, that they read, understand and shall ensure compliance with the aforementioned operating standards.
- (b) The Director of the Planning and Building Agency or designee shall have sixty (60) calendar days in which to investigate the application and background of the applicant. The department of building safety and housing, the fire department and the Orange County Health Department shall inspect the premises proposed to be devoted to the collective establishment and shall make separate recommendations to the Director of the Planning and Building Agency or designee or designee concerning compliance with the foregoing provisions.
- (c) The Director of the Planning and Building Agency or designee, after receiving the application and aforementioned recommendations, shall grant the permit if s/he finds:
- (1) The required fee has been paid.
 - (2) The application conforms in all respects to the provisions of this article.
 - (3) The applicant has not knowingly made a material misrepresentation in the application.
 - (4) The applicant has fully cooperated in the investigation of the application.
 - (5) The applicant has not had a regulatory safety permit or other similar license or permit denied or revoked for cause by this city or any other City located in or out of this state within the five (5) years prior to the date of application.
 - (6) The collective as proposed by the applicant would comply with all applicable laws including, but not limited to, health, zoning, fire and safety requirements.
 - (7) The applicant has demonstrated compliance with the California Department of Justice, Office of the Attorney General, "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" standards.
- (d) Failure of an applicant listed on the RSP Eligibility List to obtain a Certificate of Occupancy within six (6) months of submitting a completed RSP application will result in disqualification from the RSP Eligibility List and Waitlist. This sub-section applies to RSP applications submitted after April 5, 2016.

Section 6: Section 18-617.3 of Article XIII of Chapter 18 of the Santa Ana Municipal Code is hereby amended to read in full as follows:

Sec. 18-617.3. - Medical marijuana collective—Regulatory permit annual renewal.

- (a) Applications for the renewal of a permit shall be filed with the Director of the Planning and Building Agency or designee at least sixty (60) calendar days before the expiration of the current permit. Temporary permits will not be issued. Any permittee allowing his or her permit to lapse or which permit expired during a suspension shall be required to submit a new registration application and pay the corresponding original application fees.
- (b) Any person desiring to obtain a renewal of his/her respective permit shall file a written application under penalty of perjury on the required form with the chief of police who shall conduct an investigation. The application shall be accompanied by a nonrefundable filing fee established by separate resolution of the city council to help defray the cost of the investigation required by this article. An applicant shall be required to update the information contained in his/her original permit application and provide any new and/or additional information as may be reasonably required by the Director of the Planning and Building Agency or designee in order to determine whether said permit should be renewed.

Section 7: Section 18-620 of Article XIII of Chapter 18 of the Santa Ana Municipal Code is hereby amended to read in full as follows:

Sec. 18-620. - Compliance with this article and state law.

- (a) It is unlawful for any person to:
 - (i) Cause, permit or engage in the cultivation, possession, distribution or giving away of marijuana, or
 - (ii) Own establish, operate, use or permit the establishment or operation of a medical marijuana collective or cooperative, or to participate as an employee, contractor, agent, responsible person or volunteer of a collective or cooperative, except as provided in this article, and pursuant to any and all other applicable local and state laws.
 - (iii) The prohibition in subsection (ii) above includes, renting, leasing, or otherwise permitting a medical marijuana business to occupy or use a location, vehicle, or other mode of transportation.
- (b) It is unlawful for any person to cause, permit or engage in any activity related to medical marijuana except as provided in Health and Safety Code

Sections 11362.5 et seq., and pursuant to any and all other applicable local and state laws.

(c) It is unlawful for any person to knowingly make any false, misleading or inaccurate statements or representations in any forms, records, filings or documentation required to be maintained, filed or provided to the City under this article, or to any other local, state or federal government agency having jurisdiction over any of the activities of collectives.

(d) It shall be the sole responsibility of the members engaged in the management of the collective to ensure that the collective is at all times operating in a manner compliant with all applicable state laws and this article. Nothing in this article shall be construed as authorizing any actions which violate state law with regard to the cultivation, transportation, provision, and sale of medical marijuana.

(e) Cultivation of Marijuana.

(1) Personal Cultivation. Individuals 21 years of age or older may plant, cultivate, harvest, dry, or process up to (6) living marijuana plants for personal use in a private residence or accessory structure to a single private residence in the City of Santa Ana and must comply with the following requirements:

- (i) The marijuana cultivation area shall be located indoors within a private residence or accessory structure on a single parcel of property;
- (ii) No more than six (6) living marijuana plants is permitted for indoor personal cultivation;
- (iii) Marijuana in excess of 28.5 grams produced by plants kept for indoor personal cultivation must be kept in a locked space on the grounds of the private residence not visible from the public right-of way.
- (iv) There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana plants, equipment used in the growing and cultivation operation, or any light emanating from the cultivation; or
- (v) The cultivation may not violate any California Building, Electrical or Fire Codes or any other health and safety standards.

(2) Commercial Cultivation. Commercial cultivation of marijuana or medical marijuana is prohibited anywhere in the City. No

person, including a qualified patient or primary caregiver, shall engage, permit, or participate in the commercial cultivation of marijuana in the City.

(3) Outdoor Cultivation. Outdoor cultivation of marijuana or medical marijuana is prohibited anywhere in the City. No person, including a qualified patient or primary caregiver, shall engage, permit, or participate in the outdoor cultivation of marijuana in the City.

(4) Nuisance.

(i) It is hereby declared to be unlawful, a public nuisance, and a violation of this Chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to cause or allow such parcel to be used for the cultivation of marijuana, unless the person is authorized by state law to grow marijuana within a private residence, and such authorized person is complying with all requirements of this Chapter.

(5) Public Nuisance Prohibited.

(i) It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to create a public nuisance in the course of cultivating marijuana plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces:

- (1) Odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public;
- (2) Repeated responses to the parcel by law enforcement personnel;
- (3) A repeated disruption to the free passage of persons or vehicles in the neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public;
- (4) Any other impacts on the neighborhood which are disruptive of normal activity in the area including, but not limited to, grow lighting visible outside the dwelling, excessive vehicular traffic

- or parking occurring at or near the dwelling, and excessive noise emanating from the dwelling.
- (5) Outdoor and Commercial growing and cultivation of marijuana.

(f) A permitted medical marijuana dispensary may deliver medical marijuana only to a qualified patient or caregiver. Medical marijuana delivery services by dispensaries possessing regulatory safety permits must comply with Business and Professions Code §19340. Delivery of cannabis from a dispensary permitted pursuant to this Chapter can only be made in a city or county that does not expressly prohibit it by ordinance. Delivery services by dispensaries not in possession of regulatory safety permits is expressly prohibited.

Section 8: Section 21-127 of Article XII of Chapter 21 of the Santa Ana Municipal Code is hereby amended to read in full as follows:

Sec. 21-127. - Marijuana collectives/cooperatives—Annual business license tax assessment.

(a) *Annual business license tax assessment for marijuana collectives/cooperatives.*

- (1) Every collective/cooperative whether it is organized or conducted as a "not for profit" business, a "non-profit" business, or a "for-profit" business, shall pay an annual business license tax in accordance with Chapter 21 of this Code and the sections and subsections hereunder.
- (2) For the purposes of this article, a marijuana collective/cooperative is defined in section 18-611 of this Code and is considered to be a business as that term is defined in section 21-3 of this chapter.
- (3) For the purposes of this article, a collective/cooperative is not considered to be a religious or charitable organization.
- (4) "Medical marijuana collective/cooperative" or "collective/cooperative" shall mean any activity regulated or permitted by Chapter 18 of this Code.
- (5) For the purposes of this article, a marijuana collective/cooperative is not considered to be a business or person having a "specified exemption" or "specified exclusion" from business license taxation as set forth in sections 21-48 and 21-49 of this chapter.
- (6) For the purposes of this article, a "nonprofit organization" shall mean any institution or organization that is exempted from taxes measured by income or gross receipts pursuant to Article XIII, Section 26 of the California Constitution as codified under Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code

and Section 37101 (c) of the Government Code or Sub-Chapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986. An institution or organization operating as a collective/cooperative and claiming a gross receipts assessment business license tax exemption under this section shall have the burden of furnishing to the collector such information as the collector may require to validate the claim of exemption including but not limited to such a determination by the California Franchise Tax Board or any other information requested by the collector.

- (7) For the purposes of this article, "gross receipts" shall mean any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration including any monetary consideration for marijuana whatsoever, including, but not limited to, membership dues, reimbursements provided by members, regardless of form, or the total amount of cash or in-kind contributions, including all operating costs related to the growth, cultivation or provision of marijuana or any transaction related thereto. "Gross receipts" shall also include without limitation anything else of value obtained by a collective/cooperative. The term "gross receipts" shall also include the total amount of the sale price of all sales, the total amount charged or received for the performance of any act, service or employment of whatever nature it may be, whether or not such service, act or employment is done as a part of or in connection with the sale of goods, wares, merchandise, for which a charge is made or credit allowed, including all refunds, cash credits and properties of any amount or nature, any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom, on account of the cost of the property sold, the cost of materials used, the labor or service cost, interest paid or payable, losses, or any other expense whatsoever; provided that cash discounts allowed or payment on sales shall not be included. "Gross receipts" shall also include the amount of any federal, manufacturer's or importer's excise tax included in the price of property sold, even though the manufacturer or importer is also the retailer thereof and whether or not the amount of such tax is stated as a separate charge. "Gross receipts" shall not include the amount of any federal tax imposed on or with respect to retail sales whether or not the amount of such tax is stated as a separate charge. "Gross receipts" shall not include the amount of any federal tax imposed on or with respect to retail sales whether imposed upon the retailer or the consumer and regardless of whether or not the amount of federal tax is stated to customers as a separate charge, or any California state, city or city and county sales or use tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser, or such part of the sales price of any property previously sold and returned by the purchaser to the seller which is

refunded by the seller by way of cash or credit allowances given or taken as part payment on any property so accepted for resale. "Gross receipts" shall be calculated without any deduction on account of any of the following:

- (i) The cost of tangible property sold or bartered;
- (ii) The cost of materials or products used, labor or service cost, interest paid, losses, or other expense; or
- (iii) The cost of transportation of the marijuana, or other property or product.

(b) *Business license tax rates for marijuana collectives/cooperatives.*

- (1) Every collective/cooperative, excepting a qualified "nonprofit organization," whether it is organized or conducted as a "not for profit" business, a "non-profit" business, or a "for-profit" business, shall pay a separate business license tax at a rate of up to ten (10) percent of the gross receipts generated or otherwise received for each branch establishment or separate property location of the business. The gross receipts tax shall be initially set at a rate of five (5) percent. The maximum tax rate shall not exceed ten (10) percent of gross receipts. This tax shall not be adjusted for inflation pursuant to section 21-121 of this chapter.
- (2) Notwithstanding the maximum tax rate of ten (10) percent of gross receipts imposed under subsection (b)(1), the city council may in its discretion at any time by ordinance implement a lower gross receipts tax rate for all marijuana collectives/cooperatives, as defined in such ordinance, subject to the maximum rate of ten (10) percent of gross receipts. The city council may by ordinance increase any such gross receipts tax rate from time to time, not to exceed the maximum gross receipts tax rate established under subsection (b)(1).
- (3) Effective January 1, 2018, the gross receipts tax initially set at a rate of five (5) percent pursuant to subsection (b)(1), shall be increased to a rate of six (6) percent. The maximum tax rate shall not exceed ten (10) percent of gross receipts. This tax rate shall not be adjusted for inflation pursuant to section 21-121 of this chapter.
- (4) As part of the gross receipts tax imposed by this article, each collective/cooperative shall pay a minimum basic rate of two thousand dollars (\$2,000.00) annually for each separate branch location or separate property location of the business.

- (c) *Modification, repeal or amendment.* The city council may repeal the ordinance codified in this article, or amend it in a manner which does not result in an increase in the tax or taxes imposed herein, without further voter approval. The city council may likewise by ordinance adopt and add additional provisions to any other article of this chapter and relate them to this article, or amend any existing provisions of any article of this chapter as they may already relate to this article in any manner which does not result in an increase in the tax or taxes imposed herein, without further voter approval. If the city council repeals said ordinance or any provision of this article, it may subsequently reenact it without voter approval, as long as the reenacted ordinance or section does not result in an increase in the tax or taxes imposed herein.
- (d) *Administration—Rules, regulations, and guidelines; interpretation/clarification.* In order to aid in the city's collection of taxes due under this article and to ensure that all marijuana collectives/cooperatives are taxed consistently to the best of the city's ability, the collector, with the concurrence of the city attorney, may promulgate rules, regulations, and guidelines, to implement and administer this article including, but not limited to rules, regulations, and guidelines harmonizing other provisions of this chapter with the provisions of this article in any manner not inconsistent with the intent of this article and which does not result in an increase in the tax or taxes imposed herein. The collector may also, with the concurrence of the city attorney, interpret or clarify the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this article.
- (e) *Occasional transactions—Exemptions.*
- (1) The provisions of this article shall not apply to persons having no fixed place of business within the City of Santa Ana who come into the city for the purpose of transacting a specific item of marijuana collective/cooperative business at the request of a specific patient, client or customer, provided that such person does not come into the city for the purpose of transacting business on more than five (5) days during any calendar year.
- (2) For any person not having a fixed place of business within the City of Santa Ana who comes into the city for the purpose of transacting collective/cooperative activities, the business tax payable by such person may be apportioned by the collector in accordance with this chapter.

- (f) *Reporting and remittance.* Beginning as set forth in subsection (k) below, and monthly thereafter, each marijuana collective/cooperative (except qualified nonprofit organizations exempt from taxes measured by income or gross receipts) required to pay a tax based on gross receipts under this article, shall report to the city any gross receipts received during the preceding monthly reporting period and shall likewise remit to the city the taxes due and owing during said period. For purposes of this section, month shall mean calendar month, and taxes shall begin to accrue on the date that a person or entity first receives a business license or other permit to operate as a collective/cooperative.

The payment of the two thousand dollars (\$2,000.00) minimum basic rate gross receipts tax required annually for each separate branch location or separate property location of the business in accordance subsection (b)(3), shall be made annually prior to the beginning of the fiscal year beginning April first of the current year and expiring on the 31st day of March of the following year. In the case of a new collective/cooperative the minimum basic rate gross receipts tax shall be paid in advance prior to any new business activity being undertaken. Every new licensee shall pay in advance an amount equal to one-quarter ($\frac{1}{4}$) of the annual minimum basic rate gross receipts tax, for each quarter and fraction of a quarter remaining during the period for which the new license is issued.

- (g) *Delinquent date—Penalty.* Any individual or entity who fails to pay the taxes required by this article when due shall be subject to penalties and interest as set forth in accordance with this chapter. The collector is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

- (h) *Payment of tax does not authorize unlawful business.*

- (1) The payment of a business tax required by this article, and its acceptance by the city, shall not entitle any person to carry on any collective/cooperative unless the person has complied with all of the requirements of this code and all other applicable laws, nor to carry on any collective/cooperative in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such collective/cooperative is in violation of any law.
- (2) No tax paid under the provisions of this article shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any legal business in an illegal manner, or any business in violation of any ordinance of the city. Nothing in this

article implies or authorizes that any activity connected with the distribution or possession of marijuana is legal unless otherwise authorized and allowed by California and federal law. Nothing in this section shall be applied or construed as authorizing the sale of marijuana.

- (i) *Business license tax certificate—Required.* There are imposed upon all persons engaged in transacting and carrying on any collective/cooperative business activity in the city taxes in the amounts prescribed in this article. It shall be unlawful for any person, either for him or herself or for any other person, to commence, transact or carry on any business in the city without first having procured a business license from the city under this chapter and having paid the taxes set forth in this article, and without complying with any and all applicable provisions contained in this chapter. The carrying on of any collective/cooperative without complying with all the provisions of this article shall constitute a separate violation of this chapter for each and every day that such collective/cooperative is so carried on.
- (j) *Classification of business license assessment type—Term and renewal.* The business license issued to marijuana collectives/cooperatives shall be classed as a gross receipts assessment type, issued for the same term of license as set forth in subsection 21-71(c) and shall be subject to renewal in accordance with sections 21-72(c), 21-73(c), and 21-77 of this chapter.
- (k) *Operative date.* Upon the approval by the majority of the voters of the City of Santa Ana at the November 4, 2014 general election, the taxes imposed by this article shall become operative and shall be applied by the collector upon all marijuana collectives/cooperatives.
- (l) *Operative date of increased gross receipts tax rate.* The gross receipts tax set initially at a rate of five (5) percent pursuant to subsection (b)(1) shall be increased to a rate of six (6) percent effective January 1, 2018, pursuant to subsection (b)(3).

Section 9. If any section, subsection, sentence, clause, phrase or portion of this ordinance 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 ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance 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.

ADOPTED this _____ day of _____, 2017.

Miguel A. Pulido
Mayor

APPROVED AS TO FORM
Sonia R. Carvalho, City Attorney

By: 
Lisa Storck
Assistant City Attorney

AYES: Councilmembers: _____
NOES: Councilmembers: _____
ABSTAIN: Councilmembers: _____
NOT PRESENT: Councilmembers: _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-_____ to be the original ordinance adopted by the City Council of the City of Santa Ana on _____, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: _____

Clerk of the Council
City of Santa Ana