

RESOLUTION 2018-083

ORDERING THE CITY CLERK TO SUBMIT A MEASURE TO THE  
VOTERS TO ADOPT AN ORDINANCE IMPOSING A CANNABIS  
BUSINESS TAX ON COMMERCIAL CANNABIS ACTIVITIES IN TRACY  
TO FUND POLICE AND CODE ENFORCEMENT SERVICES AT THE  
GENERAL MUNICIPAL ELECTION ON NOVEMBER 6, 2018 AND  
DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL  
ANALYSIS OF THE MEASURE

WHEREAS, At the meeting of the City Council of the City of Tracy on today's date, the Council adopted a resolution calling for and giving notice of a General Municipal Election to be held on November 6, 2018 and requesting that the Board of Supervisors of the County of San Joaquin consolidate said election with the Statewide General Election to be held that day, and

WHEREAS, Pursuant to Section 9222 of California Elections Code, the City Council is authorized to place measures on the ballot to be considered at a general municipal election, and

WHEREAS, The proposed Cannabis Business Tax Ordinance attached hereto as Exhibit "A" and incorporated herein by reference ("Ordinance") would impose a special tax on businesses engaged in commercial cannabis (marijuana) activity in Tracy ("Special Tax"), and

WHEREAS, If approved by the voters, the revenue from the Special Tax will be used to fund police and code enforcement services in the City, and

WHEREAS, The proposed Special Tax cannot be imposed without two-thirds voter approval in accordance with Article XIII C of the California Constitution, and

WHEREAS, The City Council desires to submit the Special Tax to the qualified voters of the City at the next General Municipal Election to be held on Tuesday, November 6, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TRACY AS FOLLOWS:

**Section 1. Recitals.** The City Council hereby finds and determines that the foregoing recitals are true and correct.

**Section 2. Election.** The City Council hereby orders the City Clerk to submit the Special Tax as proposed in the attached Ordinance to the voters at the General Municipal Election to be held on November 6, 2018.

**Section 3. Rate and Method.** The type, rate, and method of collection of the tax are set forth in the Ordinance. The cumulative amount of the tax shall not exceed 15% of the gross receipts of cannabis businesses in the City.

**Section 4. Ballot Label.** The ballot label for the proposed Special Tax shall be submitted for a "Yes" or "No" vote as follows:

Shall the City of Tracy adopt an ordinance establishing a special tax on cannabis businesses at annual rates, not to exceed \$12.00 per canopy square foot for cultivation (adjusted for inflation), 6% of gross receipts for retail cannabis businesses, and 4% for all other businesses; which is expected to generate an estimated \$35,000 to \$100,000 annually to fund police and code enforcement services and that shall be levied until repealed by voters?	YES	
	NO	

**Section 5. Full Text.** The full text of the Ordinance, which is attached as Exhibit “A” shall be printed in the sample ballot/voter information pamphlet for the November 6, 2018 election.

**Section 6. Approval.** Pursuant to Section 2(d) of Article XIII C of the California Constitution, this measure requires approval by a two-thirds vote of those casting ballots on the measure.

**Section 7. Filing with County.** The City Clerk shall file a certified copy of this Resolution with the Board of Supervisors and County Elections Department of the County of San Joaquin.

**Section 8. Analysis and Argument.** The City Attorney is directed to prepare an impartial analysis of the measure in accordance with Elections Code 9280, and file the analysis with the City Clerk by the date established by the County Elections Department. Any person or persons may file an argument either for or against the ballot measure on or before by the date established by the County Elections Department. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials.

**Section 9. CEQA.** The approval of this Resolution is exempt from the California Environmental Quality Act (“CEQA”; Public Resources Code Sections 21000, et seq, and 14 Cal. Code Reg. Sections 15000 et seq “CEQA Guidelines”). The special tax to be submitted to the voters will be used to fund police and code enforcement services; it is not a commitment to any particular action. As such, under CEQA Guidelines Section 15378 (b)(4), the proposed tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue generated by the tax were used for a purpose that would have such an effect, the City of Tracy would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guideline Section 15060 CEQA analysis is not required.

**Section 10. Effective Date.** This Resolution shall be effective immediately upon adoption by a majority vote of the City Council.

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The foregoing Resolution was adopted by the Tracy City Council on the 1st day of May, 2018, by the following vote:

AYES: COUNCIL MEMBERS: DEMENT, RANSOM, YOUNG, VARGAS, RICKMAN

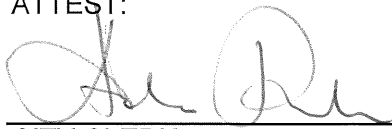
NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE

  
MAYOR

ATTEST:

  
CITY CLERK

**ORDINANCE NO. 1255**

**AN ORDINANCE OF THE CITY OF TRACY, ADDING  
CHAPTER 6.40 "CANNABIS BUSINESS TAX" TO TITLE 6  
OF THE TRACY MUNICIPAL CODE TO IMPOSE A TAX  
ON COMMERCIAL CANNABIS ACTIVITIES IN TRACY**

**THE PEOPLE OF THE CITY OF TRACY DO ORDAIN AS FOLLOWS:**

SECTION 1. Amendment to the Tracy Municipal Code. Title 6 of the Tracy Municipal Code is hereby amended to include Chapter 6.40 titled "Cannabis Business Tax" and shall read as follows:

**CHAPTER 6.40  
CANNABIS BUSINESS TAX**

**Sections:**

- 6.40.010 Title.
- 6.40.020 Authority and Purpose.
- 6.40.030 Intent.
- 6.40.040 Definitions.
- 6.40.050 Tax imposed.
- 6.40.060 Use of Proceeds; Audits.
- 6.40.070 Reporting and remittance of tax.
- 6.40.080 Payments and communications –timely remittance.
- 6.40.090 Payment – when taxes deemed delinquent.
- 6.40.100 Notice not required by City.
- 6.40.110 Penalties and interest.
- 6.40.120 Refunds and credits.
- 6.40.130 Refunds and procedures.
- 6.40.140 Personal cultivation not taxed.
- 6.40.150 Administration of the tax.
- 6.40.160 Appeal procedure.
- 6.40.170 Enforcement –action to collect.
- 6.40.180 Apportionment.
- 6.40.190 Constitutionality and legality.
- 6.40.200 Audit and examination of premises and records.
- 6.40.210 Other licenses, permits, taxes or charges.
- 6.40.220 Payment of tax does not authorize unlawful business.
- 6.40.230 Deficiency determinations.
- 6.40.240 Failure to report – nonpayment, fraud.
- 6.40.250 Tax assessment – service of notice.
- 6.40.260 Tax assessment – hearing, application, and determination.
- 6.40.270 Successor's and Assignee's Responsibility.

- 6.40.280 Conviction for violation – taxes not waived.
- 6.40.290 Violation deemed misdemeanor.
- 6.40.300 Severability.
- 6.40.310 Consistency with Business License Tax.
- 6.40.320 Remedies cumulative.
- 6.40.330 Amendment or repeal.

**6.40.010 Title.**

This ordinance shall be known as the Cannabis Business Tax Ordinance.

**6.40.020 Authority and Purpose.**

This Ordinance is adopted to achieve the following, among other purposes, and shall be interpreted in order to accomplish those purposes:

- A. To impose a special tax, for revenue purposes, on the privilege of cultivating, transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, selling, or distributing cannabis, products containing cannabis, cannabis accessories and any ancillary products by Cannabis Businesses in the City of Tracy. The Cannabis Business Tax is levied based upon business gross receipts and square footage of plant canopy. It is not a sales and use tax, a tax upon income, or a tax upon real property;
- B. To dedicate the proceeds of the taxes imposed by this Ordinance to fund police and code enforcement services;
- 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 relating to the imposition of a special tax.

The Cannabis Business Tax is a special tax enacted solely for raising revenue for the stated purposes and not for regulation. It shall apply to all persons engaged in Cannabis Business in the City of Tracy. The tax imposed by this Chapter is a special tax under Article XIII C of the California Constitution.

This Ordinance is adopted pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act, added by Proposition 64, approved by California voters in November 2016, and as amended to date (“MAUCRSA”), Article XIII C of the California Constitution, California Government Code Sections 53732 and 53734, and all other applicable laws as now exist or may hereafter be adopted.

**6.40.030 Intent.**

The intent of this Ordinance is to levy a tax on all Cannabis Businesses that operate in the City of Tracy, regardless of whether such business was authorized under state and local laws at the time this Ordinance was adopted. Nothing in this Ordinance shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

**6.40.040 Definitions.**

Unless otherwise provided in this Chapter, the definitions set forth in Chapter 6.40 “Business Taxes”, Article 1 of Chapter 8.08 “Taxation”, and Chapter 6.36 “Marijuana Business and Deliveries,” as may be amended from time to time, shall apply to this Chapter. In the event the definitions of provisions of those chapters conflict with any provision in this Chapter, then this Chapter shall control to the extent necessary to administer and effectuate the propose of this Chapter. The following words and phrases shall have the meanings set forth below when used in this Chapter:

A. “Business” shall include all activities engaged in or caused to be engaged in within the City of Tracy, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by California Business and Professions Code Section 26001, subdivision (f), California Health and Safety Code Section 11018, and by other state law, and is not limited to medical cannabis.

C. “Cannabis accessories” means any device or equipment used, intended for use or designed for use in planting, propagating, cultivating, growing, storing, or smoking, of cannabis, as described in Section 11018.2 of the California Health and Safety Code and is not limited to medical cannabis accessories.

D. “Cannabis product” means any product containing cannabis or its derivatives, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, and products described in Section 11018.1 of the California Health and Safety Code and is not limited to medical cannabis products.

E. “Canopy” means all areas occupied by any portion of a cannabis plant whether contiguous or noncontiguous on any one site. When plants occupy multiple horizontal planes (as when plants are placed on shelving above other plants) each plane shall be counted as a separate canopy area.

F. “Cannabis business” means any business activity involving cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and wholesaling of cannabis, of cannabis products or of ancillary products and accessories, whether or not carried on for gain or profit and whether or not such business is licensed by the State. “Cannabis Business” does not include any business whose only relationship to cannabis or

cannabis products is the production or sale of Cannabis Accessories and specifically excludes personal cultivation activities conducted in accordance with state law.

G. “Cannabis business tax” or “business tax,” means the tax due pursuant to this Chapter for engaging in cannabis business in the City of Tracy.

H. “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 personal recreational cannabis cultivation as authorized by MAUCRSA, for which the person receives no compensation whatsoever.

I. “City Cannabis Business Permit” or “Cannabis Business Permit” means a regulatory permit issued by the City of Tracy to a person to authorize that person to operate or engage in a Cannabis business.

J. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis and includes, but is not limited to, the operation of a nursery.

K. “Delivery” means the transfer, for any form of compensation, of cannabis, cannabis products, or cannabis accessories to a customer or caregiver at a location that is not a dispensary.

L. “Employee” means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

M. “Engaged in business as a cannabis business” means the commencing, conducting, operating, managing or carrying on of a Cannabis Business, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City of Tracy or coming into the City of Tracy from an outside location to engage in such activities. A person shall be deemed engaged in business within the City of Tracy if:

1. Such person or person’s employee maintains a fixed place of business within the City of Tracy for the benefit or partial benefit of such person;
2. Such person or person’s employee owns or leases real property within the City of Tracy for business purposes;
3. Such person or person’s employee regularly maintains a stock of tangible personal property in the City of Tracy for sale in the ordinary course of business;
4. Such person or person’s employee regularly conducts solicitation of business within the City of Tracy; or

5. Such person or person's employee performs work or renders services in the City of Tracy.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in business."

N. "Evidence of doing business" means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the City of Tracy.

O. "Fiscal year" means July 1 through June 30 of the following calendar year.

P. "Gross Receipts," except as otherwise specifically provided, means, whether designated a sales price, royalty, rent, commission, dividend, or other designation, the total amount (including all receipts, cash, credits and property of any kind or nature) received or payable for sales of goods, wares or merchandise or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from Gross Receipts:

1. Cash discounts where allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
5. Cash value of sales, trades or transactions between departments or units of the same business;
6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;



7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;

8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the Finance Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 6.40.140 shall not be subject to the Cannabis Business Tax under this Chapter. However, any retail sales not subject to this Chapter as a result of the administrative ruling shall be subject to the appropriate business tax under Chapter 6.04 or any other Chapter or Title as determined by the Tax Administrator.

Q. "Lighting" means a source of light that is primarily used for promoting the biological process of plant growth that is artificial or natural. Lighting does not include sources of light that primarily exist for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via small skylights, windows or ventilation openings.

R. "Nursery" means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis and includes a greenhouse.

S. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

T. "Sale" means and includes any sale, exchange, or barter.

U. "State" means the State of California.

V. "State license," "license," or "registration" means a state license issued pursuant to California Business & Professions Code Sections 26000, *et seq.* or other applicable state law.

W. "Tax Administrator" means the Finance Director of the City of Tracy or his or her designee.

X. "Taxpayer" shall mean any person engaging in business as a Cannabis Business that is subject to this Chapter.

Y. "Testing Laboratory" means a cannabis business that (i) offers or performs tests of cannabis or cannabis products, (ii) offers no service other than such tests, (iii) sells no products, excepting only testing supplies and materials, (iv) is accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state and (v) is registered with the State Department of Public Health.

**6.40.050 Tax imposed.**

A. Beginning January 1, 2019, there is imposed upon each person who is engaged in business as a cannabis business a cannabis business tax regardless if the business has been issued a permit to operate lawfully in the City of Tracy or is operating unlawfully.

B. The maximum tax rate of the cannabis business tax shall be as follows:

1. For every person who is engaged in commercial cannabis cultivation in the City of Tracy, the maximum rate shall be:
  - a) Up to twelve dollars (\$12.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
  - b) Up to ten dollars (\$10.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
  - c) Up to eight dollars (\$8.00) annually per square foot of canopy space in a facility that uses no artificial lighting.
  - d) Up to four dollars (\$4.00) annually per square foot of canopy space for any nursery.

For purposes of this subsection (B), the square feet of canopy space for a business shall be rebuttably presumed to be the maximum square footage of canopy allowed by the conditional use permit issued to the business by the City of Tracy for commercial cannabis cultivation, or, in the absence of a conditional use permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. Should a City of Tracy conditional use permit be issued to a business which cultivates only for certain months of the year, the City of Tracy shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the business. All canopy square footage that is authorized by the conditional use permit shall be included in the calculation of the tax for cultivation. No deduction will be applied to any canopy square footage that is not used for cultivation unless the Tax Administrator is informed in writing that such space will not be used and authorizes such reduction for the purpose of relief from the tax prior to the period for which the space will not be used.

2. For every person who engages in the operation of a testing laboratory, the maximum tax rate shall not exceed two and a half percent (2.5%) 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) the maximum tax rate shall not exceed six percent (6%) of gross receipts.

4. For every person who engages in a cannabis distribution business, the maximum tax rate shall not exceed three percent (3%) of gross receipts.
  5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in Section (B) (1), (2), (3) or (4), the maximum tax rate shall not exceed four percent (4%) of gross receipts.
- C. The City Council may, by resolution or ordinance, in its discretion, adjust the rate of the cannabis business tax, including establishing different tax rates for different categories of Cannabis Business, including for medical versus adult use. However, in no event may the City Council set any adjusted rate that exceeds the maximum rate calculated pursuant to subsection (B) of this Section.
- D. On July 1, 2020 and on each July 1 thereafter, the maximum annual tax rate per square foot of each type of canopy space shall increase by the percentage change between January of the calendar year prior to such increase and January of the calendar year of the increase in the Consumer Price Index (“CPI”) for all urban consumers in the San Francisco-Oakland-San Jose area as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

**6.40.060 Use of Proceeds; Audits.**

A. The proceeds of the tax imposed by this Chapter shall be deposited in a special account to fund police and code enforcement services.

B. The Tax Administrator shall arrange for an annual independent audit of the receipts and expenditures of the special account to ensure accountability and the proper disbursement of the special tax proceeds. The audit shall be filed with the City Council and made available to the public for inspection no later than January following the close of each fiscal year.

**6.40.070 Reporting and remittance of tax.**

A. The cannabis business tax imposed by this Chapter shall be paid, in arrears, on a quarterly basis. For commercial cannabis cultivation, the tax due for each calendar quarter shall be based on the square footage of the business’s canopy space during the quarter and the rate shall be 25% of the applicable annual rate. For all other cannabis businesses activities, the tax due for each calendar quarter shall be based on the gross receipts for the quarter.

B. Quarterly business taxes shall be due on the first day of July, October, January, and April and delinquent at 5:00 p.m. on the twentieth day of the first month in which the quarterly business tax is due. The Tax Administrator may require that the statement be submitted on a form prescribed by the Tax Administrator. The tax for each calendar quarter shall be due and payable on that same date as the statement for the calendar quarter is due.

C. Upon cessation of a cannabis business, tax statements and all outstanding taxes, fees, and penalties shall be immediately due for all calendar quarters up to the calendar quarter during which cessation occurred.

D. The Tax Administrator may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure collection of the tax. The Tax Administrator may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The Tax Administrator may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.

**6.40.080 Payments and communications – timely remittance.**

Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due date would fall on a Friday during which City Hall is closed, Saturday, Sunday or a holiday, the due date shall be the next regular business day on which the City of Tracy is open to the public.

**6.40.090 Payment - when taxes deemed delinquent.**

Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 6.40.060 and 6.40.070.

**6.40.100 Notice from City not required.**

The City of Tracy may, as a courtesy, send a tax notice to the business. However, the Tax Administrator is not required to send a notice of assessment pursuant to Section 6.40.240, a notice of delinquency pursuant to Section 6.40.220, or any other tax notice or bill to any person subject to the provisions of this Chapter. Failure to send any tax notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

**6.40.110 Penalties and interest.**

A. Any person who fails or refuses to pay any Cannabis Business Tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to twenty-five percent (25%) of the amount of the tax due to the City of Tracy, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one percent (1.0%) per month.

2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax due to the City of Tracy, in addition to the amount of the tax, plus interest at the rate of one percent (1.0%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one percent (1.0%) per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a cannabis business tax and the payment is subsequently returned unpaid by the bank for any reason, the Cannabis Business will be liable for the tax amount due plus any fees, penalties and interest as provided for in this Section, and any other amount allowed under state law.

**6.40.120 Refunds and credits.**

A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in Section 6.40.120.

B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, cessation, dissolution, or other termination of a business.

**6.40.130 Refunds and procedures.**

A. Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City of Tracy under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Tax Administrator within one (1) year of the date the tax was originally due and payable.

B. The Tax Administrator, his or her designee or any other City officer charged with the administration of this Chapter shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Tax Administrator to do so.

C. In the event that the cannabis business tax was erroneously paid, and the error is attributable to the City of Tracy, the City of Tracy shall refund the full amount of tax erroneously paid up to one (1) year from when the error was identified. If the error is attributable to the

taxpayer, the City of Tracy shall retain an amount from the refund reasonably calculated to cover costs incurred in verifying the error.

**6.40.140 Personal Cultivation Not Taxed.**

The provisions of this Chapter shall not apply to personal cannabis cultivation as defined by MAUCRSA. This Chapter shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever related to that personal use.

**6.40.150 Administration of the tax.**

A. It shall be the duty of the Tax Administrator to collect the taxes, penalties, fees, and perform the duties required by this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Tax Administrator may from time to time promulgate such administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this Chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Tax Administrator may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all cannabis business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this Chapter;
3. Receive and record all taxes remitted to the City of Tracy as provided in this Chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
5. Assess penalties and interest to taxpayers pursuant to this Chapter;
6. Determine amounts owed and enforce collection pursuant to this Chapter.

**6.40.160 Appeal procedure.**

Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the City Manager by filing a notice of appeal with the City Clerk within thirty (30) days of the serving or mailing of the notice of delinquency pursuant to Section 6.40.220 or notice of assessment

pursuant to Section 6.40.240. The City Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the City Clerk, or his or her designee, shall give notice in writing to such operator at the last known place of address. The finding of the City Manager shall be final and conclusive and shall be served upon the taxpayer appellant in the manner prescribed by this Chapter for service of notice. Any amount found to be due shall be immediately due and payable upon the service of the notice in accordance with this Chapter.

**6.40.170 Enforcement - action to collect.**

Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the City of Tracy. Any person owing money to the City of Tracy under the provisions of this Chapter shall be liable in an action brought in the name of the City of Tracy for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the City of Tracy to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax, penalties and/or fees imposed by this Chapter or the failure to comply with any of the provisions of this Chapter.

**6.40.180 Apportionment.**

If a business subject to the tax is operating both within and outside the City of Tracy, it is the intent of the City of Tracy to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the City of Tracy. To the extent federal or state law requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The Tax Administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

**6.40.190 Constitutionality and legality.**

This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this Chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law. If a person believes that the tax, as applied to him or her, is impermissible under applicable law, he or she may request that the Tax Administrator release him or her from the obligation to pay the impermissible portion of the tax.

**6.40.200 Audit and examination of premises and records.**

A. For the purpose of ascertaining the amount of cannabis business tax owed or verifying any representations made by any taxpayer to the City of Tracy in support of his or her tax calculation, the Tax Administrator shall have the power to inspect any location where commercial cannabis business occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, state and federal income tax returns, and other records relating to the gross receipts of the business) of persons engaged in cannabis businesses. In

conducting such investigation, the tax administrator shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.

B. It shall be the duty of every person liable for the collection and payment to the City of Tracy of any tax imposed by this Chapter to keep and preserve, for a period of at least four (4) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City of Tracy, which records the Tax Administrator or his/her designee shall have the right to inspect at all reasonable times.

**6.40.210 Other licenses, permits, taxes, fees or charges.**

A. Nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other Chapter of this Code or any other ordinance or resolution of the City of Tracy, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other Chapter of this code or any other ordinance or resolution of the City of Tracy.

**6.40.220 Payment of tax does not authorize unlawful business.**

A. The payment of a cannabis business tax required by this Chapter, and its acceptance by the City of Tracy, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this Code and all other applicable state laws.

B. No tax paid under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law.

**6.40.230 Deficiency determinations.**

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this Chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever the Tax Administrator makes a deficiency determination, a notice of deficiency shall be given to the person concerned in the same manner as notices of assessment are given under Section 6.40.240.

**6.40.240 Failure to report—nonpayment, fraud.**



A. Under any of the following circumstances, the Tax Administrator may make and give notice of an assessment of the amount of tax owed by a person under this Chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this Chapter;
2. If the person has not paid the tax due under the provisions of this Chapter;
3. If the person has not, after demand by the Tax Administrator, filed a corrected statement, or furnished to the Tax Administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this Chapter; or
4. If the Tax Administrator determines that the nonpayment of any business tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter and any other penalties allowed by law.

B. The notice of assessment shall separately set forth the amount of any tax known by the Tax Administrator or estimated by the Tax Administrator, after consideration of all information within the Tax Administrator's knowledge concerning the business and activities of the person assessed, under each applicable section of this Chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

**6.40.250 Tax assessment; service of notice.**

The notice of assessment or any other notice issued pursuant to this Chapter shall be served upon the person either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Tax Administrator for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purposes of this Chapter, service by mail is complete at the time of deposit in the United States mail.

**6.40.260 Tax assessment - hearing, application and determination.**

Within thirty (30) days after the date of service of the notice of assessment, the person may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Tax Administrator shall become final and conclusive. Within thirty (30) days of the receipt of any such application for hearing, the Tax Administrator shall cause the matter to be set for hearing before him or her no later than thirty (30) days after the receipt of the application, unless a later date is agreed to by the Tax Administrator and the person requesting the hearing. Notice of such hearing shall be given by the Tax Administrator to the person requesting such hearing

not later than five (5) days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Administrator should not be confirmed and fixed as the tax due. After such hearing the Tax Administrator shall determine and, if applicable, reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 6.40.240 for giving notice of assessment.

**6.40.270 Successor's and Assignee's Responsibility.**

If any taxpayer, while liable for any amount under this Chapter, sells, assigns or otherwise transfers the business, whether voluntarily or involuntarily, the taxpayer's subsequent successor, assign or transferee, or other person obtaining ownership or control of the business, shall satisfy any tax liability owned to the City of Tracy associated with the Cannabis Business. Failure to do so for the benefit of the City will result in the successor or assignee being personally liable to the City of Tracy for the full amount of the tax liability, which includes interest and penalties.

**6.40.280 Conviction for violation - taxes not waived.**

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

**6.40.290 Violation deemed misdemeanor.**

Any person violating any of the provisions of this Chapter or any regulation or rule passed in accordance herewith, shall be deemed guilty of a misdemeanor.

**6.40.300 Severability.**

If any provision of this Chapter, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

**6.40.310 Consistency with Business License Tax.**

The City Council and the people of the City of Tracy intend this Chapter to be enforced consistently with Chapter 6.04 of this Code and any rule or regulation promulgated under that Chapter 6.04 except as expressly provided to the contrary in this Chapter.

**6.40.320 Remedies cumulative.**

All remedies and penalties prescribed by this Chapter or which are available under any other provision of the Tracy Municipal Code and any other provision of law or equity are

cumulative. The use of one or more remedies by the City of Tracy shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

**6.40.330 Amendment or repeal.**

This Chapter may be repealed or amended by the City Council without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter. The people of the City of Tracy affirm that the following actions shall not constitute an increase of the rate of a tax:

A. The restoration of the rate of the tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the tax;

B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter; or

C. The collection of the tax imposed by this Chapter even if the City had, for some period of time, failed to collect the tax.

D. The adjustment of the tax in accordance with the provisions of subdivisions (C) and (D) of Section 6.40.050, including the levying of different tax rates on medical versus adult-use cannabis.

**SECTION 2. EFFECTIVE DATE.** This Ordinance relates to the levying and collecting of a special tax and shall not take effect until approved by a two-thirds vote of voters voting on the tax at the general municipal election held on November 6, 2018 and as certified by the City Clerk.

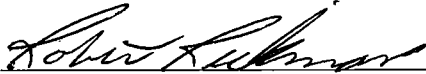
**SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT.** This Ordinance is exempt from the California Environmental Quality Act (“CEQA”; Public Resources Code Sections 21000, et seq, and 14 Cal. Code Reg. Sections 15000 et seq “CEQA Guidelines”). This Ordinance is a special tax to fund existing services; it is not a commitment to any particular action. As such, under CEQA Guidelines Section 15378 (b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue generated by the tax were used for a purpose that would have such an effect, the City of Tracy would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guideline Section 15060 CEQA analysis is not required.

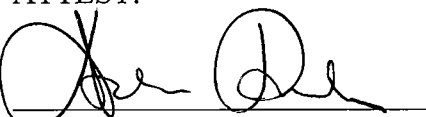
**SECTION 4. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

**SECTION 5. CERTIFICATION AND PUBLICATION.** Upon approval by the voters, the City Clerk shall certify the passage and adoption of this Ordinance and shall cause it to be published in accordance with the law.

It is hereby certified that this Ordinance was duly approved and adopted by the People of the City of Tracy at the City’s November 6, 2018 general municipal election.

AYES: COUNCIL MEMBERS: DEMENT, RANSOM, YOUNG, VARGAS, RICKMAN  
NOES: COUNCIL MEMEBRS: NONE  
ABSENT: COUNCIL MEMBERS: NONE  
ABSTAIN: COUNCIL MEMBERS: NONE

  
\_\_\_\_\_  
Robert Rickman, Mayor

ATTEST:  
  
\_\_\_\_\_  
Adrianne Richardson, City Clerk

# Tracy Press

## PROOF OF PUBLICATION

Stamp

(2015.5 C.C.P.)

### STATE OF CALIFORNIA County of San Joaquin

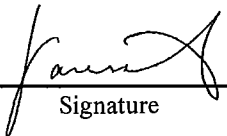
I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a part to or interested in the above entitled matter; I am the principal clerk of the printer of the Tracy Press, a newspaper of general circulation, printed and published one time a week on Friday in the City of Tracy, California, County of San Joaquin, and which of newspaper has been adjudged a newspaper of general circulation by the Superior Court, Department 4, of the County of San Joaquin, State of California, under the date of June 30, 1952, Case Number 53686; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit;

May 18

all in the year, 2018

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Tracy, California, this 24  
day of May 2018

  
Signature

## PROOF OF PUBLICATION Public Notice #0333

City of Tracy

Ordinance 1255

PUBLIC NOTICE

#0333  
NOTICE OF AMENDMENT TO  
CITY OF TRACY MUNICIPAL CODE

SUMMARY OF ORDINANCE NO.1255

AN ORDINANCE OF THE CITY OF TRACY, ADDING CHAPTER 6.40 "CANNABIS BUSINESS TAX" TO TITLE 6 OF THE TRACY MUNICIPAL CODE TO IMPOSE A TAX ON COMMERCIAL CANNABIS ACTIVITIES IN TRACY SUBJECT TO VOTER APPROVAL AT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION

Ordinance 1255 was introduced at the Council meeting held on May 1, 2018 to add Chapter 6.40 "Cannabis Business Tax" to Title 6 of the Tracy Municipal Code to impose a tax on commercial cannabis activities in Tracy. At that meeting on May 1, 2018, Council directed that the ordinance be placed on the ballot for the November 6, 2018 general municipal election for voter approval. The Ordinance will achieve the following, among other purposes, and shall be interpreted in order to accomplish those purposes: A) To impose a special tax, for revenue purposes, on the privilege of cultivating, transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, selling, or distributing cannabis, products containing cannabis, cannabis accessories and any ancillary products by Cannabis Businesses in the City of Tracy. The Cannabis Business Tax is levied based upon business gross receipts and square footage of plant canopy. It is not a sales and use tax, a tax upon income, or a tax upon real property; B) To dedicate the proceeds of the taxes imposed by this Ordinance to fund police and code enforcement services; 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 relating to the imposition of a special tax. This Ordinance relates to the levying and collecting of a special tax and shall not take effect until approved by a two-thirds vote of voters voting on the tax at the general municipal election to be held on November 6, 2018.

The City Council considered the Ordinance at a noticed public hearing held on May 1, 2018.

A certified copy of the full text of the ordinance is posted and may be read in full in the City Clerk's Office at 333 Civic Center Plaza, Tracy, California, or a copy may be obtained from that office (after paying a fee based on the City's copying costs).

Date of adoption by City Council: May 15, 2018.

Prepared by: City Attorney's Office

Tracy Press: May 18, 2018

# Tracy Press

## PROOF OF PUBLICATION

Stamp

(2015.5 C.C.P.)

### STATE OF CALIFORNIA County of San Joaquin

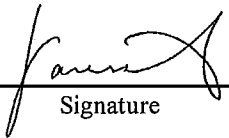
I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a part to or interested in the above entitled matter; I am the principal clerk of the printer of the Tracy Press, a newspaper of general circulation, printed and published one time a week on Friday in the City of Tracy, California, County of San Joaquin, and which of newspaper has been adjudged a newspaper of general circulation by the Superior Court, Department 4, of the County of San Joaquin, State of California, under the date of June 30, 1952, Case Number 53686; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit;

May 4

all in the year, 2018

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Tracy, California, this 8  
day of May 2018

  
\_\_\_\_\_  
Signature

## PROOF OF PUBLICATION Public Notice #0295

City of Tracy

Summary of Ordinance

No. 1255

PUBLIC NOTICE

#0295  
NOTICE OF AMENDMENT TO  
CITY OF TRACY MUNICIPAL CODE

SUMMARY OF PROPOSED ORDINANCE NO.1255

AN ORDINANCE OF THE CITY OF TRACY, ADDING CHAPTER 6.40 "CANNABIS BUSINESS TAX" TO TITLE 6 OF THE TRACY MUNICIPAL CODE TO IMPOSE A TAX ON COMMERCIAL CANNABIS ACTIVITIES IN TRACY SUBJECT TO VOTER APPROVAL AT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION

Proposed Ordinance 1255 was introduced at the Council meeting held on May 1, 2018 to add Chapter 6.40 "Cannabis Business Tax" to Title 6 of the Tracy Municipal Code to impose a tax on commercial cannabis activities in Tracy. At that meeting on May 1, 2018, Council directed that the ordinance be placed on the ballot for the November 6, 2018 general municipal election for voter approval. The proposed Ordinance will achieve the following, among other purposes, and shall be interpreted in order to accomplish those purposes: A) To impose a special tax, for revenue purposes, on the privilege of cultivating, transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, selling, or distributing cannabis, products containing cannabis, cannabis accessories and any ancillary products by Cannabis Businesses in the City of Tracy. The Cannabis Business Tax is levied based upon business gross receipts and square footage of plant canopy. It is not a sales and use tax, a tax upon income, or a tax upon real property; B) To dedicate the proceeds of the taxes imposed by this Ordinance to fund police and code enforcement services; 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 relating to the imposition of a special tax. This Ordinance relates to the levying and collecting of a special tax and shall not take effect until approved by a two-thirds vote of voters voting on the tax at the general municipal election to be held on November 6, 2018.

The City Council considered the proposed Ordinance at a noticed public hearing held on May 1, 2018.

A certified copy of the full text of the proposed ordinance is posted and may be read in full in the City Clerk's Office at 333 Civic Center Plaza, Tracy, California, or a copy may be obtained from that office (after paying a fee based on the City's copying costs).

Date of adoption by City Council: May 15, 2018.

Prepared by: City Attorney's Office

Tracy Press: May 4, 2018