

RESOLUTION 33-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY A MEASURE TO ESTABLISH A TAX ON MARIJUANA OPERATIONS, AT THE CONSOLIDATED MUNICIPAL, SCHOOL AND SPECIAL DISTRICT ELECTION TO BE HELD ON TUESDAY, NOVEMBER 7, 2017

WHEREAS, the City Council desires to submit to the voters at the special election scheduled for Tuesday, November 7, 2017 (the "Election"), a measure establishing a tax on marijuana operations; and

WHEREAS, a general tax measure may be placed on the November 7, 2017 special election because the City has previously declared a fiscal emergency pursuant to article 13C, Section 2 of the California Constitution; and

WHEREAS, by previous resolution the City Council called the Election and requested that the County of San Mateo consolidate the Election with the Consolidated Municipal, School and Special District Election to be held on the same date.

NOW, THEREFORE, the City Council of the City of Pacifica resolves:

Section 1. The City Council orders submitted to the voters a measure for the approval of an ordinance establishing a tax on marijuana operations. The measure shall be designated by letter by the San Mateo County Elections Department. The question to appear on the ballot for voter consideration shall be as follows:

Shall an ordinance establishing a Marijuana Operations Tax at the rate of 6% of a Marijuana Operation's gross receipts, which may be decreased or increased after two years to a maximum of 10% by the City Council, to help fund municipal services, including police and fire protection services, emergency medical services, park, recreation, and street maintenance services, with no sunset date and estimated to generate \$360,000 annually in tax revenue, be adopted?	YES
	NO

Section 2. The complete text of the measure to be submitted to the voters for approval is attached to this Resolution as Exhibit "A," and that the City Clerk shall maintain a copy of the measure and shall make the same available for public inspection upon request. The City Council hereby approves the ordinance attached to this Resolution as Exhibit "A," the form thereof, and its submission to the voters of the City at the November 7, 2017 election.

Section 3. The measure shall not take effect unless a majority of votes cast on the measure at the Election are in favor of the measure.

Section 4. Ballot arguments and rebuttals shall be filed in accordance with the following:

- A. That the primary arguments for and against this ballot measure shall be submitted to the City Clerk by 5:00 p.m. on the date established by the San Mateo County elections official for primary arguments.
- B. That rebuttal arguments shall be submitted to the City Clerk by 5:00 p.m. on the date established by the San Mateo County elections official for rebuttal arguments.
- C. That all arguments shall be filed with the City Clerk, signed, with printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.

Section 5. Any member of the City Council is hereby authorized to prepare a written argument in favor of or against the proposed ordinance, not to exceed 300 words.

Section 6. The City Clerk is hereby directed to transmit a copy of the measure to the City Attorney, who shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure in accordance with Section 9280 of the California Elections Code, and to file that analysis no later than the deadline established by the San Mateo County elections official.

Section 7. The County Election Department is hereby authorized to canvass the returns of the election, including this ballot measure.

Section 8. The Board of Supervisors of the County of San Mateo is hereby requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the election and to consolidate this ballot measure with any other applicable election conducted on the same day in the City. The Board of Supervisors is further requested to order the County Clerk to set forth in the voter information portion of all sample ballots to be mailed to the qualified electors of the City the full text of the measure and to mail with the sample ballots to the electors printed copies of the full text of the Ordinance, together with the arguments and rebuttal arguments (if any) for and against the measure.

Section 9. The City of Pacifica recognizes that costs will be incurred by the County of San Mateo in connection with the election and agrees to reimburse the County for any such costs.

Section 10. The City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the Election Department of the County of San Mateo.

Section 11. This Resolution shall take effect upon its adoption.

Section 12. The City Clerk shall certify to the passage of this Resolution and enter it into the book of original resolutions.

Section 13. A statement shall be printed in the ballot pursuant to Elections Code Section 9223 advising voters that they may obtain a copy of the Measure, at no cost,

upon request made to the City Clerk.

PASSED, APPROVED AND ADOPTED BY AT LEAST TWO-THIRDS OF THE CITY COUNCIL THIS 26th DAY OF JUNE, 2017 BY THE FOLLOWING VOTE:

AYES, Councilmembers: Martin, Vaterlaus, Digre, Keener, O'Neill
NOES, Councilmembers: None
ABSTAIN, Councilmembers: None
ABSENT, Councilmembers: None



Mike O'Neill, Mayor

ATTEST:



Kathy O'Connell, City Clerk

APPROVED AS TO FORM:



Michelle Marchetta Kenyon, City Attorney

Chad Herrington, Deputy City Attorney

EXHIBIT "A"

SEE NEXT PAGE

ORDINANCE NO. ____

**AN ORDINANCE OF THE PEOPLE OF PACIFICA,
CALIFORNIA, ADDING CHAPTER 18 TO TITLE 3 OF THE
PACIFICA MUNICIPAL CODE ESTABLISHING A TAX ON
MARIJUANA OPERATIONS**

THE PEOPLE OF THE CITY OF PACIFICA ORDAIN:

SECTION 1. Chapter 18 is hereby added to Title 3 of the Pacifica Municipal Code to read as follows:

“CHAPTER 18 MARIJUANA OPERATION TAX”

- 3-18.01 Purpose and intent.
- 3-18.02 Imposition of tax.
- 3-18.03 Definitions.
- 3-18.04 Payment obligation.
- 3-18.05 Registration of Marijuana Operation.
- 3-18.06 City council authorization to adjust rates.
- 3-18.07 Payment of tax does not authorize activity.
- 3-18.08 Marijuana tax is not a sales tax.
- 3-18.09 Amendments and administration.
- 3-18.10 Returns and remittances.
- 3-18.11 Failure to pay tax.
- 3-18.12 Refunds.
- 3-18.13 Enforcement.
- 3-18.14 Debts—Deficiencies—Assessments.

3-18.01 Purpose and intent.

This chapter shall be known as the “Marijuana Operation Tax” and is enacted as an excise tax on Marijuana Operations engaged in retail sales of marijuana within the City of Pacifica. The purpose of this tax is to raise revenue for the general governmental purposes of the city and not for purposes of regulation or raising revenues for regulatory purposes. All of the proceeds from the tax imposed by this chapter shall be placed in the city’s general fund and used for the usual current expenses of the city.

3-18.02 Imposition of tax.

Every Marijuana Operation operating in the city, regardless of whether such Marijuana Operation has a marijuana use permit pursuant to Title 9, Chapter 4, Article 48 of this code or a marijuana public safety license pursuant to Title 4, Chapter 16 of this code, shall pay a Marijuana Operations tax in the amount of six (6) cents for each one dollar of gross receipts or fractional part thereof received by a Marijuana Operation. Upon or after the second anniversary of the effective date of this tax, the tax may be decreased or increased up to ten (10) cents for each one dollar of gross receipts or

fractional part thereof received by a Marijuana Operation, if such decrease or increase is approved by a majority vote of the total City Council membership.

3-18.03 Definitions.

For purposes of this chapter:

A. "Marijuana" shall have the meaning set forth in Health and Safety Code section 11018 and Business and Professions Code section 19300.5(f).

B. "Marijuana Operation" means any person engaged in Commercial Cannabis Activity, as defined in Business and Professions Code section 19300.5(j), or Commercial Marijuana Activity, as defined in Business and Professions Code section 26001(d).

C. "Gross receipts" shall have the meaning set forth in Section 3-1.102(d) of this code.

D. "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 and includes the plural as well as the singular number.

3-18.04 Payment obligation.

All Marijuana Operations subject to this chapter must pay the full tax imposed by this chapter regardless of any rebate, exemption, incentive, or other reduction set forth elsewhere in this code, except as enacted pursuant to Section 3-18.05 of this code or as required by California or federal law.

All Marijuana Operations subject to this chapter shall not be exempt from paying the general business tax required under Title 3, Chapter 1 of this Code. A Marijuana Operation not subject to the Marijuana Operation tax imposed by this Chapter is subject to the general business tax required under Title 3, Chapter 1 of this Code.

All Marijuana Operations subject to this chapter shall also register and pay the registration fee described in Section 3-18.05

3-18.05 Registration of Marijuana Operation.

All Marijuana Operations subject to this chapter shall be required to annually register as follows:

A. All persons engaging in a Marijuana Operation, whether an existing, newly-established or acquired business, shall register with the Collector within thirty (30) days

of commencing operation, and shall annually renew such registration by January 1 of each year thereafter. In registering, such persons shall furnish to the Collector a sworn statement, upon a form provided by the Collector, setting forth the following information:

1. The name of the business
2. The names and addresses of each owner
3. The exact nature or kind of business;
4. The place where such business is to be carried on; and
5. Any further information which the Collector may require.

B. Any financial information required under Subsection A will be used only to calculate and enforce the tax imposed under this Chapter, will be exempt from disclosure under the Public Records Act pursuant to Government Code section 6254(i), and will not be used by the City for criminal enforcement except as provided in Sections 6-10.270 and 6-10.280 of this Chapter.

C. An annual registration fee of \$500 shall be presented with the sworn statement submitted under this section. This fee shall not be considered a tax and may be adjusted by resolution of the City Council.

3-18.06 City council authorization to adjust rates.

Notwithstanding Section 3-18.04, the City Council may establish exemptions, incentives, or other reductions, and penalties, interest charges or assessments for failure to pay the tax in a timely manner, as otherwise allowed by the code and California law. No action by the city council under this section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax specified in this chapter.

3-18.07 Payment of tax does not authorize activity.

The payment of the tax required pursuant to this chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter shall be applied or construed as authorizing the sale of marijuana by any illegal or unlawful business, or any business in violation of any ordinance of the city.

3-18.08 Marijuana Operations tax is not a or use tax.

The Marijuana Operations tax provided for under the provisions of this chapter is not a sales or use tax and shall not be calculated or assessed as such. The Marijuana Operations tax shall not be separately identified or otherwise specifically assessed or charged to any purchaser.

3-18.09 Amendments and administration.

A. Any amendment to Section 3-18.02 to increase the tax above the rate expressly provided in such section shall not become effective until such amendment is approved by the voters. The voters expressly authorize the city council to amend, modify, change, or revise any other provision of this chapter as the city council deems in

the best interest of the city.

B. The city manager or the city manager's designee may promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the tax imposed by this chapter.

C. The city manager or the city manager's designee shall annually review the marijuana taxes imposed by this chapter and publish a report detailing the total amount of revenue raised from the marijuana tax.

D. Pursuant to California Constitution Article XIII B, the appropriation limit for the city is increased to the maximum extent over the maximum period of time allowed under law consistent with the revenues generated by the marijuana tax.

3-18.10 Returns and remittances.

The tax shall be due and payable as follows:

A. All Marijuana Operations subject to this chapter shall, on or before the last day of the month following the close of each calendar month, or such different reporting period as may be established by the city manager or the city manager's designee, file a tax return with the city manager or the city manager's designee on forms provided by the city manager or the city manager's designee, of the amount of tax owed for the preceding calendar month.

B. The return shall be filed whether or not taxes are owed during the month.

C. Each such return shall contain a declaration under penalty of perjury, executed by the Marijuana Operation or authorized agent, that to the best of the signatory's knowledge, the statements in the return are true, correct and complete.

D. At the time the return is filed, the full amount of the tax owed for the preceding calendar month shall be remitted to the city manager or the city manager's designee.

E. Returns and accrued tax payments are due immediately upon cessation of business for any reason.

F. Returns and taxes not received by the city manager or the city manager's designee on or before the due date as provided in this section are delinquent and subject to the penalties and interest imposed under Section 3-18.10.

G. Returns filed and taxes remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns and taxes is addressed to the city manager or the city manager's designee, has sufficient postage, and bears a United States postmark or a postage meter imprint prior to midnight on the last day for reporting and remitting without penalty. If the envelope or other container bears a postage meter imprint as well as a United States Post Office cancellation mark, the latter shall govern in determining whether the filing and remittance are timely.

H. The city manager or the city manager's designee 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.

3-18.11 Failure to pay tax.

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

1. A penalty equal to twenty-five percent of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate established by resolution of the city council; and

2. An additional penalty equal to twenty-five percent of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and interest on the unpaid penalties calculated at the rate established by resolution of the city council.

B. Whenever a check is submitted in payment of a tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the Marijuana Operation will be liable for the tax amount due plus penalties and interest as provided for in this section plus any amount allowed under state law.

C. The city manager may waive the first and second penalties of twenty-five percent each imposed upon any person if:

1. The person provides evidence satisfactory to the city manager that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the city prior to applying to the city manager for a waiver.

2. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once to the same person or entity during any twenty-four month period.

3-18.12 Refunds.

A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in this section.

B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of a Marijuana Operation.

C. Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against the Marijuana Operation' taxes for the next calendar month.

D. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or improperly collected or received by the city under this chapter, the overpayment may be refunded as provided in subsections (E) and (F), provided a claim in writing under penalty of perjury stating the specific grounds upon which the claim is founded is filed with the city manager or the city manager's designee within three years of the date of payment. The claim shall be on forms available from the city manager or the city manager's designee.

E. The city manager or the city manager's designee 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 therefor refuses to allow such examination of claimant's books and business records after request by the city manager or the city manager's designee to do so.

F. The city manager or the city manager's designee shall initiate a refund of any tax that has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a city audit of tax receipts. In the event that the tax was erroneously paid and the error is attributable to the city, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this resolution from the amount to be refunded to cover expenses.

3-18.13 Enforcement.

A. It shall be the duty of the city manager to enforce each and all of the provisions of this chapter. The chief of police shall render such assistance in the enforcement of this chapter as may from time to time be required by the city manager.

B. For purposes of administration and enforcement of this chapter generally, the city manager, with the concurrence of the city attorney, may from time to time promulgate administrative rules and regulations.

C. The city manager shall have the power to audit and examine all books and records of Marijuana Operations as well as persons engaged in the Retailer of a Marijuana Operation, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of a Marijuana Operation or persons engaged in the operation of a Marijuana Operation, for the purpose of ascertaining the amount of tax, if any, required to be paid by the provisions of this chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this chapter. If such Marijuana Operation or person, after written demand by the city manager, refuses to make available for audit, examination or verification such books, records, or equipment as the city manager requests, the city manager may, after full consideration of all information within the city manager's knowledge concerning the Marijuana Operation and its business and activities of the person so refusing, make an assessment in the manner provided in Section 3-18.10. Said assessment shall include the reasonable costs and expenses borne by the City in conducting an audit and examination pursuant to this Section.

D. 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.

E. Any person violating this chapter or any rules promulgated pursuant to this chapter, or knowingly or intentionally misrepresenting to any officer or employee of the city any material fact in procuring a certificate or document from the city shall be guilty of an infraction violation and upon conviction thereof shall be punishable by a fine not

more than five hundred dollars, in addition to any other penalties or fees imposed pursuant to this chapter.

3-18.14 Debts—Deficiencies—Assessments.

A. The amount of any tax, penalties, and interest imposed by the provisions of this chapter shall be deemed a debt to the city. Any person operating a Marijuana Operation without first having procured a business license pursuant to Title 3, Chapter 1 of this code, a marijuana public safety license pursuant to Title 4, Chapter 16 of this code, and a marijuana use permit pursuant to Title 9, Chapter 4, Article 48 of this code shall be liable in an action in the name of the city in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such Marijuana Operation.

B. Any and all alleged deficiencies identified by the city manager shall be addressed in accordance with Section 3-26.150 of this code; except that the city manager may engage in any of the privileges or assume any of the duties delegated to the tax administrator.

3-18.15 Exemptions.

The tax imposed in Section 3-18.02 of this chapter shall not apply to any nonprofit organization that is exempted from taxes by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, or the successor of either, or to any minister, clergyman, Christian Science practitioner, rabbi, or priest of any religious organization that has been granted an exemption from federal income tax by the United States Commissioner of Internal Revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code or a successor to that section.”

SECTION 2. The adoption of this ordinance is not a “project” subject to the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section 212 et seq.). CEQA Guideline 15378(b)(4) provides that the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to a specific project that may result in a potentially significant physical impact on the environment are not projects subject to the requirements of CEQA.

SECTION 3- If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

SECTION 4. This ordinance shall be submitted to the voters at the general election to be held on November 7, 2017. In accordance with Elections Code section 9217, this ordinance shall not become operative unless and until a majority of the voters approve this ordinance, in which case this ordinance shall go into effect ten (10) days

after the date on which the election results are declared by the City Council.

PASSED, APPROVED, AND ADOPTED BY THE PEOPLE OF THE CITY OF PACIFICA AT THE REGULAR MUNICIPAL ELECTION HELD ON THE 7TH DAY OF NOVEMBER, 2017.

Mike O'Neill, Mayor

ATTEST:

Kathy O'Connell, City Clerk

APPROVED AS TO FORM:

Michelle Marchetta Kenyon, City Attorney