

ORDINANCE NO. 842-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA AMENDING CHAPTER 18 OF TITLE 3 (MARIJUANA OPERATION TAX) OF THE PACIFICA MUNICIPAL CODE AND FINDING ADOPTION OF THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, in 2017, the voters of the City of Pacifica approved an ordinance establishing a tax on marijuana operations; and

WHEREAS, on July 10, 2017, the City Council adopted Ordinance No. 819-C.S. approving Text Amendment TA-106-17 and Rezoning RZ-197-17 which established the City's marijuana regulations and marijuana operation overlay districts; and

WHEREAS, section 3-18.09 of Ordinance No. 819-C.S. provides that 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; and

WHEREAS, subsequent to introduction but prior to adoption of the City's marijuana regulation, on June 27, 2017, Senate Bill 94 ("SB 94") was enacted that integrated MCRSA with AUMA to create the Medicinal and Adult-Use Cannabis Regulation and Safety Act (the "MAUCRSA"), under which, a single regulatory system governs the medicinal and adult-use cannabis industry in California; and

WHEREAS, the City Council is concurrently considering ordinances to amend the Marijuana Regulations and Marijuana Public Safety Licenses, based on City Council's direction to draft amendments which would increase the number of allowed marijuana retail operations in the Rockaway Beach and Sharp Park Marijuana Operation Overlay Districts, allow marijuana testing and manufacturing operations to proceed through the marijuana use permit process separate from the established initial application phase, add an additional finding for approval of marijuana use permit, provide priority to existing lottery list applicants, allow manufacturers to extract cannabinoids using non-hazardous methods, develop parking requirements, and other administrative amendments to create efficiencies in the cannabis permitting process; and

WHEREAS, on January 14, 2019, the City Council also directed staff to draft amendments which would incorporate recent State law updates as a result of SB 94, including exchanging the use of the term "marijuana" to "cannabis"; and

WHEREAS, the City Council of the City of Pacifica held a duly noticed public hearing on the proposed changes on April 22, 2019, and introduced Ordinance No. 842-C.S. on April 22, 2019.

NOW, THEREFORE, the City Council of the City of Pacifica does ordain as follows:

Section 1. Recitals. The City Council of the City of Pacifica does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance and does find that revisions to Chapter 18 are in the best interest of the City for the reasons set forth herein.

Section 2. Amendments.

Chapter 18 "Marijuana Operation Tax" of Title 3 "Finance" of the Pacifica Municipal Code shall be amended to read in its entirety as follows:

"CHAPTER 18. - CANNABIS OPERATION TAX

Sec. 3-18.01. - Purpose and intent.

This chapter shall be known as the "Cannabis Operation Tax" and is enacted as an excise tax on cannabis operations engaged in retail sales of cannabis 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.

Sec. 3-18.02. - Imposition of tax.

Every cannabis operation operating in the city, regardless of whether such cannabis operation has a cannabis use permit pursuant to Title 9, Chapter 4, Article 48 of this Code or a cannabis public safety license pursuant to Title 4, Chapter 16 of this Code, shall pay a cannabis operations tax in the amount of 6/100ths (\$0.06) cents for each dollar of gross receipts or fractional part thereof received by a cannabis operation. Upon or after the second anniversary of the effective date of this tax, the tax may be decreased or increased up to 10/100ths (\$0.10) cents for each dollar of gross receipts or fractional part thereof received by a cannabis operation, if such decrease or increase is approved by a majority vote of the total City Council membership.

Sec. 3-18.03. - Definitions.

For purposes of this chapter:

- (a) "Collector" shall have the meaning set forth in Section 3-1.102(c) of this Code.
- (b) "Gross receipts" shall have the meaning set forth in Section 3-1.102(d) of this Code.
- (c) "Cannabis" shall have the meaning set forth in Health and Safety Code section 11018 and Business and Professions Code section 26001(f).
- (d) "Cannabis operation" means any person engaged in commercial cannabis activity as defined in Business and Professions Code section 26001(k), as may be subsequently amended.
- (e) "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.

Sec. 3-18.04. - Payment obligation.

All cannabis 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 cannabis 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 cannabis operation not subject to the cannabis operation tax imposed by this chapter is subject to the general business tax required under Title 3, Chapter 1 of this Code.

All cannabis operations subject to this chapter shall also register and pay the registration fee described in Section 3-18.05.

Sec. 3-18.05. - Registration of cannabis operation.

All cannabis operations subject to this chapter shall be required to annually register as follows:

- (a) All persons engaging in a cannabis 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 Section 3-18.13 of this chapter.
- (c) An annual registration fee of five hundred dollars 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.

Sec. 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.

Sec. 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 cannabis by any illegal or unlawful business, or any business in violation of any ordinance of the City.

Sec. 3-18.08. - Cannabis operations tax is not a sales or use tax.

The cannabis 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 cannabis operations tax shall not be separately identified or otherwise specifically assessed or charged to any purchaser.

Sec. 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 cannabis taxes imposed by this chapter and publish a report detailing the total amount of revenue raised from the cannabis 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 cannabis tax.

Sec. 3-18.10. - Returns and remittances.

The tax shall be due and payable as follows:

- (a) All cannabis 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 cannabis operation or authorized agent, that to the best of the signatory's knowledge, the statements in the return are true, correct and complete.
- (d) Regardless of whether a return is filed as required by this section, 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 when due.
- (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 3-18.11.
- (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.

Sec. 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 (25%) 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 (25%) percent of the amount of the tax if the tax remains unpaid for a period exceeding one (1) 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 cannabis 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 any penalties of twenty-five (25%) percent imposed pursuant to section 3-18.11 (a)(1) or (a)(2) 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.

Sec. 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 cannabis 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 cannabis operation's 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 (3) 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 financial and operational 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 an amount established by resolution of the City Council to cover the expenses of processing the claim and refunding the balance.

Sec. 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) The City Manager shall have the power to examine and audit all financial and operational records of cannabis operations as well as persons engaged in the retailer of a cannabis operation, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of a cannabis operation or persons engaged in the operation of a cannabis 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 cannabis 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 cannabis operation and its business and activities of the person so refusing, make a determination of the tax due

using the procedures set forth in this chapter. Said assessment shall include the reasonable costs and expenses borne by the City in conducting an audit and examination pursuant to this section.

- (c) 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 or local law requiring the payment of all taxes.
- (d) 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.

Sec. 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 cannabis operation regardless of whether a business license pursuant to Title 3, Chapter 1 of this Code, a cannabis public safety license pursuant to Title 4, Chapter 16 of this Code, or a cannabis use permit pursuant to Title 9, Chapter 4, Article 48 of this Code has been procured, 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 cannabis operation.
- (b) Any and all alleged deficiencies identified by the City Manager, or his designee, shall be addressed in accordance with the provisions of Section 3-7.13 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.

Sec. 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 3. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment. The City Clerk shall file a Notice of Exemption with the San Mateo County Clerk.

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 should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentence, clauses or phrases be declared unconstitutional.

Section 5. Publication. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Pacifica, California and cause the same to be published in accordance with State law.

Section 6. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law.

PASSED AND ADOPTED this 13th day of May, 2019 by the following vote:

AYES: Vaterlaus, Martin, O'Neill, Beckmeyer, Bier.

NOES: None.

ABSTAIN: None.

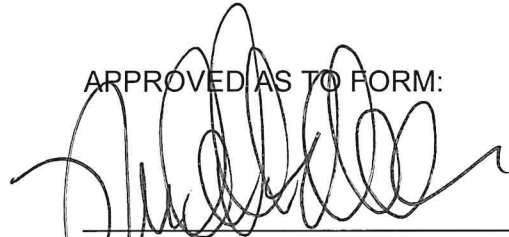
ABSENT: None.


Sue Vaterlaus, Mayor

ATTEST:


Sarah Coffey, City Clerk

APPROVED AS TO FORM:


Michelle Kenyon, City Attorney