

RESOLUTION NO. 2022-47

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA, CALLING FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES AND THE SUBMISSION TO THE VOTERS A BALLOT MEASURE PLACED ON THE BALLOT BY THE CITY COUNCIL RELATING TO A CANNABIS BUSINESS TAX

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, a General Municipal Election shall be held on November 8, 2022, for the election of Municipal Officers and the submission to the voters a ballot measure placed on the ballot by the City Council relating to a cannabis business tax.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Encinitas, California on Tuesday, November 8, 2022, a General Municipal Election for the purpose of electing the following:

- One (1) Mayor for the full term of two (2) years, with a term ending November 2024
- Two (2) Council Members:
 - One (1) Council Member to represent District 3 for a full four-year term with a term expiring November 2026
 - One (1) Council Member to represent District 4 for a full four-year term with a term expiring November 2026

SECTION 2. That the City Council, pursuant to its right and authority, adopted Resolution 2022-43 ordering the submittal to the voters at the General Municipal Election the following question, related to a Cannabis Business Tax Ballot Measure, to appear on the ballot as follows:

To fund general municipal expenses including law enforcement, fire, emergency medical services, street improvements and recreation, shall the City tax cannabis and hemp businesses at annual rates of between 4% to 7% of gross receipts for retail cannabis businesses, 1% to 4% for non-retail cannabis businesses, and \$2.00 to \$10.00 per canopy square foot for cultivation; expected to generate an estimated \$800,000 to \$1,400,000 annually and will be levied until repealed/modified by the voters?	YES
	NO

SECTION 3. That the proposed complete text of the ballot measure (ordinance) submitted to the voters is attached as Exhibit A.

SECTION 4. That the vote requirement for the ballot measure to pass is a simple majority (50% +1).

SECTION 5. That primary arguments for and against the ballot measure shall be submitted to the City Clerk no later than August 11, 2022, at 5:00 p.m., and shall not exceed 300 words.

SECTION 6. Pursuant to Resolution 2013-11 and in accordance with California Election Code Section 9285 rebuttal arguments, not exceeding 250 words, may be submitted to the City Clerk no later than August 18, 2022, at 5:00 p.m.

SECTION 7. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 8. That pursuant to Resolution 2022-48, the County of San Diego Registrar of Voters is authorized, instructed, and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 9. That the vote centers for the election shall be open at 7:00 a.m. on the day of the election and shall remain open continuously from that time until 8:00 p.m., of the same day when the vote centers shall be closed, pursuant to California Election Code Section 10242, (except as provided in Section 14401 of the Elections Code) of the State of California.

SECTION 10. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 11. That notice of the time and place of holding the election is given, and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law.

SECTION 12. That in the event of a tie vote (if any two or more persons receive an equal and the highest number of votes for an office) as certified by the County of San Diego Registrar of Voters, the City Council, in accordance with California Election Code Section 15651(a), shall set a date and time and place and summon the candidates who have received the tie votes to appear and will determine the tie by lot.

SECTION 13. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

SECTION 14. That the City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

BE IT FURTHER RESOLVED that the County of San Diego shall be reimbursed in full for the services performed by the Registrar of Voters for the City of Encinitas upon presentation of a bill therefore, and that this City agrees to indemnify and save free and harmless the County, its officers, agents and employees from expense or liability, including reasonable attorneys' fees, as the result of an election contest arising after conduct of this general municipal election, so long as the basis for any such claim arises from the conduct of the City or as a result of the reasonable reliance by County upon information provided by City.

PASSED AND ADOPTED this 15th day of June 2022, by the City Council of the City of Encinitas, State of California.


Catherine S. Blakespear, Mayor

ATTEST:

DocuSigned by:

Kathy Hollywood

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Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

Tarquin Preziosi

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Tarquin Preziosi, City Attorney

CERTIFICATION: I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing Resolution 2022-47 was duly adopted at a regular meeting of the City Council on the 15th day of June 2022, by the following vote:

AYES:	Blakespear, Hinze, Kranz, Lyndes, Mosca
NAYS:	None
ABSENT:	None
ABSTAIN:	None

DocuSigned by:

Kathy Hollywood

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Kathy Hollywood, City Clerk

CITY-SPONSORED INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The City Council for the City of Encinitas submits the following measure to the voters of the City for approval and enactment:

SECTION 1. Name.

This ballot measure shall be known and may be cited as "the City of Encinitas Cannabis Business Tax Measure" and shall be referred to herein as the "Measure."

SECTION 2. Purpose.

The purpose of the Measure is to authorize the Encinitas City Council to adopt one or more ordinances to impose a Cannabis Business Tax, for revenue purposes, pursuant to sections 37100.5 and 37100.5 of the California Government Code, upon cannabis and hemp businesses that engage in business in the City. The Cannabis Business Tax shall be levied based upon business gross receipts at rates of between four to seven percent (4% to 7%) on retail cannabis uses, one to four (1% to 4%) on non-retail uses, except for commercial cannabis cultivation or commercial industrial hemp cultivation which shall be taxed on square footage at rates of between two to ten dollars (\$2 to \$10) per canopy area. It is not a sales and use tax, a tax upon income, or a tax upon real property and shall not be calculated or assessed as such. The Cannabis Business Tax shall not be separately identified or otherwise specifically assessed or charged to any member, customer, patient, or caretaker. The Cannabis Business Tax is a general tax enacted solely for general, governmental purposes of the City and not for specific purposes. All of the proceeds from the taxes imposed by this Measure shall be placed in the City's general fund and be available for any lawful municipal purpose.

Now, therefore, the People of the City of Encinitas do ordain as follows:

AN ORDINANCE OF THE PEOPLE OF THE CITY OF ENCINITAS, CALIFORNIA, AUTHORIZING THE CITY COUNCIL TO ADOPT ONE OR MORE ORDINANCES ESTABLISHING A CANNABIS BUSINESS TAX OF BETWEEN 4% TO 7% ON RETAIL CANNABIS BUSINESSES AND BETWEEN 1% TO 4% ON NON-RETAIL CANNABIS BUSINESSES AND HEMP BUSINESSES AND FOR COMMERCIAL CANNABIS CULTIVATION OR COMMERCIAL INDUSTRIAL HEMP WHICH SHALL BE TAXED ON SQUARE FOOTAGE AT RATES OF BETWEEN TWO TO TEN DOLLARS (\$2 TO \$10) PER CANOPY AREA WITHIN THE CITY AS EXPRESSLY LIMITED HEREIN.

SECTION 3. Uncodified ordinance.

The City Council of the City of Encinitas, pursuant to the procedures set forth in the Government Code and the City's Municipal Code and without prior approval of the electorate, may by the adoption and/or amendment of one or more ordinances: a) impose a gross receipts tax upon cannabis businesses, of no less than 4% and no more than 7% on retail cannabis uses, no less than 1% and no more than 4% on non-retail cannabis uses, which shall be applicable to all cannabis businesses with physical premises in the City and/or that engage in retail delivery of cannabis within the City; and b) impose a tax on commercial cannabis cultivation or commercial industrial hemp cultivation which shall be taxed on square footage at rates of between two to ten dollars (\$2 to \$10) per canopy area.

SECTION 4. Definitions.

"Cannabis business" means any activity by any person involving cannabis or industrial hemp, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and/or wholesaling of cannabis, cannabis products, industrial hemp, industrial hemp products and/or of ancillary products and accessories, whether or not carried on for gain or profit, but does not include personal cultivation of cannabis pursuant to Health and Safety Code Section 11362.2 or the Compassionate Use Act and the Medical Marijuana Program Act.

"Canopy" means all areas occupied by any portion of a cannabis or industrial hemp 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.

"Person" means any 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 or entity, and the plural as well as the singular.

If not defined herein, the words and phrases used in this ordinance shall have the same definitions ascribed to them in Division 10 of the Business and Professions Code, including Section 26001, and in Title 4, Division 19, Department of Cannabis Control, of the California Code of Regulations.

SECTION 5. Future Changes and Amendments.

Any future changes or amendments to this ordinance, including any future changes or amendments to any Municipal Code section affected by or adopted pursuant to this Measure, may occur in the manner set forth in the Government Code and the City's Municipal Code, and shall not require a vote of the people, except that any increase of the gross receipts tax above 7% or reduction below 4% for retail cannabis uses, above 4% or reduction below 1% for non-retail uses, or any increase in the cultivation tax above ten dollars (\$10) or reduction below two dollars (\$2) per canopy area shall require a vote

of the people. The specific tax rate or rates as limited herein may be set by ordinance or resolution of the City Council.

SECTION 6. Inconsistencies.

Any provision of the Encinitas Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 7. Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The People of the City of Encinitas hereby declares that they would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 8. Effective Date.

This ordinance shall take effect according to law ten days after certification of the election at which it is adopted.