

RESOLUTION NO. 2022-43

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ENCINITAS ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY OF A CERTAIN BALLOT MEASURE RELATING TO CANNABIS BUSINESS TAX; REQUESTING THAT THE SAN DIEGO BOARD OF SUPERVISORS AUTHORIZE THE COUNTY OF SAN DIEGO REGISTRAR OF VOTERS TO RENDER SPECIFIED SERVICES TO THE CITY OF ENCINITAS RELATING TO THE CONDUCT OF THE ELECTION, AND REQUESTING CONSOLIDATION OF THIS ELECTION WITH THE GENERAL MUNICIPAL AND STATEWIDE CONSOLIDATED ELECTION TO BE HELD ON NOVEMBER 8, 2022.

WHEREAS, Sections 37101 and 37100.5 of the California Government Code authorize the City of Encinitas to levy a license tax, for revenue purposes, upon business transacted in the City; and

WHEREAS, at on November 3, 2020, the voters of the City of Encinitas ("City") approved Ordinance No. 2020-18 ("Measure H") adding Chapter 9. 25 - Cannabis Activity Zoning Ordinance of Encinitas to the City Municipal Code to allow certain cannabis-related uses and activities in specified zones consistent with regulations and restrictions contained in Measure H, including retail sales, product manufacturing, kitchens, distribution and cultivation of cannabis and industrial hemp; and

WHEREAS, if cannabis and hemp businesses are established in the City they are likely to create demands upon City services, and the City's existing tax system does not currently impose any taxes on cannabis businesses, including cultivation, manufacturing, distribution, testing and retail uses, aside from generally applicable municipal taxes; and

WHEREAS, the City Council desires the ability to adopt an ordinance or ordinances to tax all cannabis and hemp businesses operating in the City, including but not limited to those pursuant to Measure H, to be known as the "Cannabis Business Tax"; and

WHEREAS, proceeds of the Cannabis Business Tax will be used to offset demands on City service and to augment the City's General Fund; and

WHEREAS, the Cannabis Business Tax cannot be imposed without majority voter approval; and

WHEREAS, 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; and

WHEREAS, the City Council desires to submit the Cannabis Business Tax measure to the voters of the City at a General Municipal Election to be held on Tuesday, November 8, 2022, and to be consolidated with the general municipal election and the statewide election to be held on that date.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ENCINITAS DOES HEREBY RESOLVE 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 calls for a General Election for Tuesday November 8, 2022 (the "Election") and orders, pursuant to Section 9222 of the Elections Code, that the Cannabis Business Tax Measure be submitted to the voters at that election.

Section 3. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of San Diego County is requested to consolidate the Election with the General Municipal Election and Statewide Election to be held on November 8, 2022.

Section 4. Ballot Question. That the following question be submitted to the voters 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 5. Text of Measure. The proposed complete text of the ordinance to be submitted to the voters is attached as Exhibit A.

Section 6. Publication of Measure. The City Clerk is directed to publish a synopsis of the measure at least one time not later than one week before the election in accordance with Section 12111 of the Elections Code.

Section 7. Approval. Under Article XIII C of the Constitution, the vote requirement for this measure to pass shall be a majority of those casting ballots on the measure (50% plus 1).

Section 8. California Environmental Quality Act. The City Council hereby finds and determines that this resolution is exempt from the California Environmental Quality Act, Public Resources Code Sections 21000 et seq. ("CEQA") and 14 Cal. Code Re. Sections 15000 et seq. ("CEQA Guidelines"). The calling and noticing of an election for the submission of a ballot measure to voters is not a project within the meaning of CEQA Guidelines 15378. The tax submitted to the voters is a general tax that can be used for any governmental purpose; it is not a commitment to any particular action or actions.

Section 9. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 10. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the County of San Diego Registrar of Voters to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 11. Filing with County. The City Clerk is hereby directed to file a certified copy of this Resolution with the San Diego County Board of Supervisors and the San Diego County Registrar of Voters.

Section 12. Impartial Analysis. That the City Clerk shall transmit a copy of the Measure to the City Attorney, unless the organization or salaries of the office of the City Attorney are affected. The City Attorney shall prepare an impartial analysis of the measure not exceeding 500 words showing the effect of the measure on existing law and the operation of the measure. The analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the governing body of the city. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point type, the following: "The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the election official's office at 760 633-2601 and a copy will be mailed at no cost to you. The impartial analysis shall be filed by the date set by the City Clerk the filing of primary arguments.

Section 13. Argument. That the City Council authorizes the Mayor and City Council to file a written argument not exceeding 300 words regarding the City measure as specified above, accompanied by the printed names(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the City measure may be submitted to the City Clerk. The arguments shall be filed with the City Clerk, signed, with the 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. The arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument.

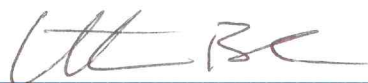
Section 14. Implementation. The City Clerk and City Manager are authorized to take all actions as necessary to effectuate the purposes of this resolution and the election. The City Clerk and City Attorney are authorized to make any typographical, clerical, and non-substantive corrections to this resolution as may be deemed necessary by the County of San Diego Registrar of Voters.

Section 15. Effective Date. This Resolution shall be effective immediately upon adoption.

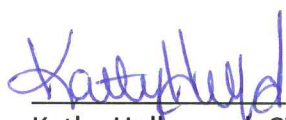
Section 16. Certification. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

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.

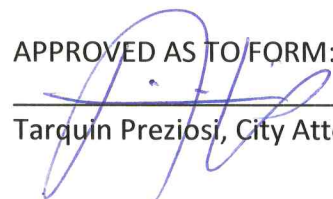
PASSED AND ADOPTED this 11th of May, 2022, by the City Council of the City of Encinitas, State of California.


Catherine S. Blakespear, Mayor

ATTEST:


Kathy Hollywood, City Clerk

APPROVED AS TO FORM:


Tarquin Preziosi, City Attorney

I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing Resolution was duly adopted at a regular meeting of the City Council on the 11th of May, 2022, by the following vote:

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

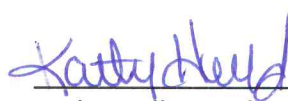

Kathy Hollywood, City Clerk

EXHIBIT A

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.

EXHIBIT A

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

EXHIBIT A

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.