

ORDINANCE NO. 2219

**AN ORDINANCE OF THE PEOPLE OF THE CITY
OF CAMPBELL AMENDING TITLE 5 OF THE
CAMPBELL MUNICIPAL CODE TO IMPOSE A
GROSS RECEIPTS TAX ON MARIJUANA
BUSINESSES**

The City Council and the People of the City of Campbell do ordain as follows:

Section 1: Findings and Declarations.

- A. An initiative petition has qualified for a special election in the City of Campbell that would allow up to 3 dispensaries in the City, and increased cultivation of marijuana. Under the initiative petition:
1. Dispensaries could be located in Planned Development zoning districts, which includes areas developed for residential use;
 2. Dispensaries could abut residential properties, except on the side of the dispensaries on which the dispensary has entrances or exits, or where the entrance or exit is on a side that shares a corner with a residential zoned property. Dispensaries could also abut legally existing residences that currently exist in non-residential zoning districts;
 3. Dispensaries could be located near daycare operation, parks, and homes;
 4. Patients could cultivate up to 100 square feet of marijuana plants without a license from the City;
 5. Caregivers could cultivate up to 500 square feet of marijuana plants without a license from the City; and
 6. No restriction is placed on where cultivation can take place.
- B. The special election on the dispensary initiative is to be held on April 25, 2017.
- C. Many California cities, as well as the City of Campbell, have reported negative impacts of marijuana processing and dispensing activities, including but not limited to:
1. Dispensaries are home to marijuana crops and large amounts of cash, thereby making them targets for criminal activity. Jurisdictions with medical marijuana dispensaries report crime such as armed robberies, felony assaults, organized crime (particularly in the supply chain), and money laundering;

2. Many California cities, as well as the City of Campbell, have experienced trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests related to marijuana cultivation and dispensing;
 3. Quality of life concerns also associated with dispensaries include, loitering, diversion of marijuana to non-patients (e.g. "shoulder tapping"), increased prevalence of marijuana smoking in public and increased use of marijuana by minors;
 4. Marijuana grown or stored onsite can create strong odors which are offensive to many people and detectable far beyond property boundaries;
 5. The strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery;
 6. The indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building; and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants;
 7. According to information from the City of San Jose, it is not uncommon for medical marijuana dispensaries to have between 500 and 700 customers on a daily basis. This is approximately 50 people per hour who arrive on foot and in vehicles, which can have a substantial impact on traffic congestion and parking in both residential and business districts; and
- D. It would cost the City of Campbell an estimated \$968,537 in staff costs annually to regulate up to 3 dispensaries; and additional resources to deal with the adverse impacts associated with the dispensaries;
- E. The passage of the initiative petition will thus cause an immediate and severe impact on the fiscal resources of the City, and the City's overall fiscal health. As a consequence of these impacts the City will have an immediate need for additional revenue if the City is to remain solvent and able to meet the needs of its citizens; and this need constitutes an emergency.
- F. The emergency identified in these findings are declarations can be partially mitigated by imposing a gross receipts tax on marijuana businesses operating in the City of Campbell.
- G. The next regularly scheduled general election for members of the City Council is not until November of 2018, more than eighteen (18) months after the special election on the dispensary initiative. Waiting eighteen (18) months without the proposed gross receipts tax on marijuana businesses would

significantly imperil the City's fiscal stability, and leave the City without adequate resources to deal with the impacts arising out of the operation of the marijuana businesses.

Section 2: Amendment to Municipal Code Section 5.01.005. Section 5.01.030 of the Campbell Municipal Code is hereby amended to read as follow, with strikeouts (~~strikeouts~~) indicating deleted text and underlining indicating new text:

5.01.005 - Definitions.

Except as otherwise defined in this Title, ~~the~~ various businesses, trades, professions, industries, occupations, callings and activities provided in this title to be licensed and regulated shall be defined in accordance with the meanings and connotations generally given them by those engaged in such activities and as recognized generally by the public.

Section 3: Addition of Municipal Code Section 5.01.008. Section 5.01.008 is hereby added to Chapter 5.01 of the Campbell Municipal Code to read as follows, and is declaratory of existing law:

5.01.008 – Business License Required.

No one may engage in any business in the City of Campbell unless and until they obtain and maintain a business license pursuant to this Title, and pay all required taxes and fees.

Section 4: Amendment to Municipal Code Section 5.04.010 – Tax on Marijuana Businesses. Campbell Municipal Code section 5.04.010 is hereby amended by inserting the following row into the tax rate schedules between the row for "Live commercial entertainment" and the rows for "Massage Establishments," to read as follows:

Marijuana Business	7% of gross receipts per Chapter 5.12
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Section 5: Addition of Chapter 5.12 to the Municipal Code – Taxation of Marijuana Businesses. Chapter 5.12 is added to Title 5 of the Campbell Municipal Code to read as follows:

Chapter 5.12 – Marijuana Business License Tax

Sections:

5.12.010 - Purpose of chapter.

This Chapter is enacted solely to raise revenue for general municipal purposes and is not intended for regulation.

5.12.020 - Definitions.

The definitions set forth below shall govern the application and interpretation of this Chapter:

"Business" shall include all activities engaged in or caused to be engaged in within the city, 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;

"Business tax" or "marijuana business tax" or "marijuana tax" shall mean the tax due for engaging in marijuana business in the City of Campbell;

"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 or room and board;

"Engaged in business" means the commencing, conducting, operating, managing or carrying on of a marijuana business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the city or coming into the city from an outside location to engage in such activities. A person shall be deemed engaged in business within the city if any of the following apply:

- A. Such person or person's employee maintains a fixed place of business within the city for the benefit or partial benefit of such person;
- B. Such person or person's employee owns or leases real property within the city for business purposes;
- C. Such person or person's employee regularly maintains a stock of tangible personal property in the city for sale in the ordinary course of business;
- D. Such person or person's employee regularly conducts solicitation of business within the city;
- E. Such person or person's employee performs work or renders services in the city on a regular and continuous basis involving more than five working days per year; or

F. Such person or person's employee utilizes the streets within the city in connection with the operation of motor vehicles for business' purposes.

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

"Gross receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, 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, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

- A. Cash discounts allowed and taken on sales;
- B. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
- C. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- D. 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;
- E. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;
- F. 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;
- G. Cash value of sales, trades or transactions between departments or units of the same business;
- H. 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;

- I. Transactions between a partnership and its partners;
- J. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:
 - 1. The voting and non-voting stock of which is owned at least eighty percent by such other corporation with which such transaction is had; or
 - 2. Which owns at least eighty percent of the voting and non-voting stock of such other corporation; or
 - 3. At least eighty percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had;
- K. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection I. above;
- L. 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;
- M. 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.

"Gross receipts" subject to the business tax shall be that portion of gross receipts relating to business conducted within the city;

"Marijuana" shall have the same meaning as set forth in section 8.40.020 of this Code;

"Marijuana business" means business activity including but not limited to, planting, cultivation, harvesting, transporting, delivering, transferring, dispensing, manufacturing, compounding, converting, processing, preparing, storing,

packaging, and/or the wholesale and/or retail sales of marijuana and any ancillary products in the City, whether or not carried on for gain or profit, except that "marijuana business" shall not include cultivation solely for personal use pursuant to section 8.40.040;

"Person" means, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), municipal corporation (other than the City), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court;

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

5.12.030 - Other licenses, permits, taxes, fees or charges.

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 license or permit required by, under or by virtue of any provision of any other Title or Chapter of this Code or any other ordinance or resolution of the City or of its Council, 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 Title or Chapter of this Code, or any other ordinance or resolution of the City or of its Council. Any references made or contained in any other Title or Chapter of this Code to any licenses, license taxes, fees or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other Titles or Chapters of this Code.

5.12.040 - Business License Required.

A. There are imposed upon all persons engaged in marijuana business in the City taxes in the amounts prescribed in this Chapter and section 5.04.010. It shall be unlawful for any person, either for him or herself or for any other person, to commence, transact or carry on marijuana business in the City without first having procured a business license from the City under this Title and having paid all required taxes and fees, and without complying with any and all provisions contained in this Chapter. The carrying on of any marijuana business without complying with any and all provisions of this Title, shall constitute a separate violation of this Title for each and every day that such marijuana business is so carried on.

B. The business license required to be obtained under this Title and the taxes required to be paid under this Chapter and section 5.04.010 are declared to be required pursuant to the taxing power of the City of

Campbell solely for the purpose of obtaining revenue and are not regulatory permit fees.

5.12.050 - Payment of tax does not authorize unlawful business.

A. The payment of a business tax required by this Chapter, and its acceptance by the City, shall neither entitle any person to carry on any marijuana business unless the person has complied with all of the requirements of this Code and all other applicable laws, nor to carry on any marijuana business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such marijuana business is in violation of any law.

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 ordinance of the city.

5.12.060 – Amount of Tax.

Every person engaged in marijuana business in the City shall pay a business tax at a rate of seven percent of gross receipts. The City Council may at any time amend this Title to change the amount of the tax, provided that the amount of the tax shall not be increased above fifteen percent of gross receipts without approval of the voters.

5.12.070 - Apportionment.

A. None of the tax provided for by this chapter shall be applied so as to occasion an undue burden upon interstate commerce or be violative of the equal protection and due process clauses of the Constitutions of the United States or the State of California.

B. If any case where a business tax is believed by a taxpayer to place an undue burden upon interstate commerce or be violative of such constitutional clauses, the taxpayer may apply to the Finance Director for an adjustment of the tax. It shall be the taxpayer's obligation to request in writing for an adjustment within one year after the date of payment of the tax. If the taxpayer does not request in writing within one year from the date of payment, then taxpayer shall be conclusively deemed to have waived any adjustment for that year.

C. The taxpayer shall, by sworn statement and supporting testimony, show the method of business and the gross volume of business and such other information as the Finance Director may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Finance Director shall then conduct an investigation, and shall fix as the tax for the taxpayer an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over

and above the tax so fixed. In fixing the tax to be charged, the Finance Director shall have the power to base the tax upon a percentage of gross receipts or any other measure which will assure that the tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this Chapter.

D. Should the Finance Director determine that the gross receipt measure of tax to be the proper bases, the Finance Director may require the taxpayer to submit a sworn statement of the gross receipts and pay the amount of tax as determined by the Finance Director.

5.12.080 - Audit and examination of records and equipment.

The Finance Director shall have the power to audit and examine all books and records of persons engaged in marijuana business including both State and Federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in marijuana business, and, where necessary, all equipment, of any person engaged in marijuana business in the City, for the purpose of ascertaining the amount of business tax, if any, required to be paid by the provisions hereof, 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 person, after written demand by the Finance Director, refuses to make available for audit, examination or verification such books, records or equipment as the director requests, the Finance Director may, after full consideration of all information within his or her knowledge concerning the marijuana business and activities of the person so refusing, make an assessment in the manner provided in Sections 5.12.100 through 5.12.120 of any taxes estimated to be due.

5.12.090 - Deficiency determinations.

If the Finance Director 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. 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 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 a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Sections 5.12.100 through 5.12.120.

5.12.100 - Tax assessment - Authorized when - Nonpayment - Fraud.

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

1. If the person has not filed any statement or return required under the provisions of this Chapter;
2. If the person has not paid any tax due under the provisions of this Chapter;
3. If the person has not, after demand by the Finance Director, filed a corrected statement or return, or furnished to the Finance Director adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under the provisions of this Chapter;

B. The notice of assessment shall separately set forth the amount of any tax known by the director to be due or estimated by the director, after consideration of all information within the Finance Director's knowledge concerning the business and activities of the person assessed, to be due 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.

5.12.110 - Tax assessment - Notice requirements.

The notice of assessment shall be served upon the person either by handing it to him or her personally, 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 appearing on the face of the business license issued under this Title or to such other address as he or she shall register with the Finance Director for the purpose of receiving notices provided under this Chapter; or, should the person have no business license issued and should the person have no address registered with the Finance Director for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

5.12.120 - Tax assessment - Hearing - Application and determination.

Within ten days after the date of service the person may apply in writing to the Finance Director 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 Finance Director shall become final and conclusive. Within thirty days of the receipt of any such application for hearing, the Finance director shall cause the matter to be set for hearing before him or her not later than thirty days after the date of application, unless a later date is agreed to by the Finance Director and the person requesting the hearing. Notice of such hearing shall be given by the Finance Director to the person requesting such hearing not later than five days prior to such hearing. At such hearing said applicant may appear and offer

evidence why the assessment as made by the Finance Director should not be confirmed and fixed as the tax due. After such hearing the Finance Director shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 5.12.110 for giving notice of assessment.

5.12.130 - Effect of state and federal reference/ authorization.

Unless specifically provided otherwise, any reference to a State or Federal statute in this Chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any amendment thereto, or to any change of interpretation thereto by a State or Federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would, under California law, require voter approval of such amendment or interpretation, or to the extent that such change would result in a tax decrease. To the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this Chapter is expanded as a result of changes in State or Federal law, no amendment or modification of this Chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Chapter.

5.12.140 – Application to Non-Profit Operations.

The exemption provided in subsection (a) of section 5.01.010 this Code shall be inapplicable to the tax imposed under this Chapter.

Section 6: Use of Tax Proceeds. The proceeds of the taxes imposed by this ordinance shall be deposited in the City's general fund to be used by the City for any of the City's general expenses, including but not limited to the provision of Police, Fire, Code Enforcement services.

Section 7: Authority of Council to Amend and Adjust: Nothing contained in this ordinance shall be construed as a limitation on the City Council's authority to establish and adjust regulatory fees to cover or off-set the cost of any regulatory program. The City Council may also amend, delete, revise or clarify any of the provisions of this ordinance, and the Titles and Chapters of the Campbell Municipal Code referenced in this ordinance, so long as those amendments, deletions, revisions or clarifications do not increase or extend any tax.

Section 8: Severability. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision

shall not affect the validity or constitutionality 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 or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared, invalid or unconstitutional.

Section 9: CEQA. The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Section 10: Effective Date. This ordinance shall become effective upon approval of a majority of voters voting on the measure for approval of this ordinance at the election to be held on April 25, 2017.

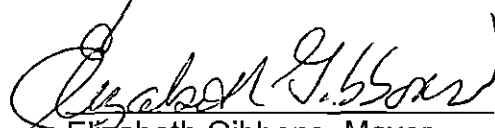
PASSED AND ADOPTED this 7th day of February, 2017 by the following roll call vote:

AYES: Councilmembers: Waterman, Landry, Resnikoff, Gibbons


NOES: Councilmembers: None

ABSENT: Councilmembers: Cristina

APPROVED:


Elizabeth Gibbons, Mayor

ATTEST:

for 
Wendy Wood, City Clerk