

**CITY COUNCIL OF THE CITY SONORA  
STAFF REPORT**

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**MEETING DATE:** May 21, 2018

**TO:** CITY COUNCIL

**FROM:** DOUGLAS L. WHITE, CITY ATTORNEY

**RE:** ADOPT RESOLUTION NO. 5-21-2018-A OF THE CITY COUNCIL OF THE CITY OF SONORA, SUBMITTING A BALLOT MEASURE TO THE CITY'S QUALIFIED VOTERS AT THE NOVEMBER 6, 2018, GENERAL ELECTION TO ESTABLISH A BUSINESS LICENSE TAX ON THE GROSS RECEIPTS OF CANNABIS BUSINESSES, IN AN AMOUNT NOT TO EXCEED FIFTEEN PERCENT (15%); AND INCREASING THE CITY'S APPROPRIATIONS LIMIT FOR THE FISCAL YEARS 2019-2023 BY THE AMOUNT OF THE TAX PROCEEDS RECEIVED

**RECOMMENDATION:**

Adopt Resolution No. 5-21-2018-A submitting a ballot measure to the City of Sonora's ("City") qualified voters at the November 6, 2018, Statewide General Election authorizing the City to impose a business license tax on the gross receipts of cannabis businesses, if such business are allowed, in an amount not to exceed fifteen percent (15%); and increasing the City's appropriations limit for the fiscal years 2019-2023 by the amount of the tax proceeds received by the cannabis business license tax.

**DISCUSSION:**

On November 8, 2016, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA") was approved by California voters with the passage of Proposition 64. Effective November 9, 2016, AUMA legalizes the use and cultivation of non-medical marijuana for personal use, for persons 21 years or older. AUMA permits local jurisdictions to regulate or ban non-medical (adult or recreational use) marijuana related to the cultivation, distribution, and delivery, transportation, manufacturing, testing laboratories, dispensaries, and micro-marijuana facilities.

On June 27, 2017, the Governor signed SB 94, entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA," also referred to as the trailer bill). MAUCRSA essentially combines the previous medical marijuana acts (the 2015 MMRSA and 2016 MCRSA laws) with AUMA and establishes a State system for the regulation and administration of both medical and recreational marijuana use.

On January 16, 2018, the City adopted Ordinance 848 amending the City's Municipal Code, authorizing commercial cannabis activity in the City. The City's cannabis ordinance authorizes

commercial cannabis dispensaries, manufacturing, and testing laboratories. Cannabis deliveries are prohibited, unless performed by a dispensary authorized by the City. The City reserves the right to prohibit dispensaries from delivering cannabis products.

Commercial cannabis manufacturing facilities and testing laboratories are only permitted in the Limited Manufacturing Zone, subject to a conditional use permit and development agreement. commercial cannabis dispensaries are permitted, subject to a conditional use permit and development agreement, in the following zones:

- Tourist and Administrative
- Commercial
- Note: dispensaries are prohibited within the Benefit Zone A, located in Downtown Sonora
- General Commercial
- Limited Manufacturing

The attached resolution would place a measure on the ballot authorizing the Sonora City Council (“City Council”) to impose a business license tax on cannabis business in the City. Under the City’s existing business license tax ordinance, all persons engaged in business activity in the City are required to obtain a business license certificate and pay the City’s business license tax.<sup>1</sup> The proposed ordinance would authorize a business tax to be imposed on any cannabis business in the City, with a maximum tax rate of up to fifteen percent (15%) of the business’ monthly gross receipts. If adopted, the actual tax rate will be set by resolution of the City Council. The City Council will also be authorized to establish penalties and fines to enforce the payment of the cannabis business tax. The City Manager will be authorized to establish rules and procedures for the collection of the business tax, and the finance department will be directed to audit any businesses submitting such taxes to the City.

If the measure is adopted by qualified City voters at the November 6, 2018, election, the City Council will be authorized, but not required, to impose a cannabis business tax on any commercial cannabis activity, including dispensaries.

The cannabis business license tax is proposed as a general tax, which the City may use for any legal municipal purpose. Under Article XIIC of the State Constitution, no local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. Therefore, staff is requesting approval from the City Council to put the attached Ordinance tax measure on the ballot for the general election on November 6, 2018.

The measure also increases the City’s appropriations limit, to enable the City to expend the revenues generated by the cannabis business license tax. Voters adopted Proposition 4 in 1979, which added Article 13B to the State Constitution limiting a local government's ability to spend its tax revenues. Calculating the City’s Gann limit requires the previous fiscal year’s limit, per capita personal income, a population change factor, and an evaluation of non-residential new construction. (See Gov. Code, § 7902.) Voters also have the authority under Article XIIB to approve or continue changes in the spending limit, by a majority popular vote, for a period not to exceed four years from the most recent vote approving or continuing a change in the spending

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<sup>1</sup> Sonora Municipal Code Chapter 5.10.

limit. To prevent a future issue with the City’s appropriations limit, the measure proposes to raise the limit by the amount of revenues generated by the cannabis business tax.

If the City Council decides not to submit the cannabis business tax for voter approval at the November 8, 2018, election, the next statewide general election to submit this measure will occur in 2020, unless the City Council conducts a special election.

**FISCAL IMPACT:**

The City will be required to pay Tuolumne County for its services in consolidating the election, which is typically estimated around \$5 per registered voter. However, if the measure passes, the City anticipates significant revenue resulting from the cannabis business tax.

**ENVIRONMENTAL:**

MAUCRSA provides an exemption under the California Environmental Quality Act (“CEQA”) for any ordinance, rule, or regulation by a city that requires discretionary review and approval for commercial cannabis activity.<sup>2</sup> Additionally, this item does not constitute a project under CEQA because it does not establish any entitlements or authorize any projects within the City.<sup>3</sup>

**OPTIONS:**

1. Adopt Resolution No. 5-21-2018-A placing the measure on the ballot for the November 6, 2018 Statewide General Election;
2. Continue adoption of the resolution to a later City Council meeting, and provide staff with direction to amend the resolution; or
3. Reject the resolution placing the cannabis business tax measure on the ballot for the November 6, 2018, Statewide General Election.

**ATTACHMENTS**

1. Cannabis Business Tax Ordinance
2. Resolution Placing Measure on November 6, 2018, Statewide General Election Ballot

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<sup>2</sup> Bus. & Prof. Code, § 26055, subd. (h).

<sup>3</sup> Pub. Res. Code, §§ 21065 & 21080.

**RESOLUTION NO. 5-21-2018-A**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SONORA  
SUBMITTING A BALLOT MEASURE TO THE CITY'S QUALIFIED VOTERS AT  
THE NOVEMBER 6, 2018, STATEWIDE GENERAL ELECTION, AUTHORIZING THE  
CITY TO IMPOSE A BUSINESS LICENSE TAX ON THE GROSS RECEIPTS OF  
CANNABIS BUSINESSES IN AN AMOUNT NOT TO EXCEED FIFTEEN PERCENT  
(15%); AND INCREASING THE CITY'S APPROPRIATIONS LIMIT FOR THE  
FISCAL YEARS 2019-2023 BY THE AMOUNT OF THE TAX PROCEEDS RECEIVED**

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**WHEREAS**, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana Act" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age or older and the personal cultivation of up to six cannabis plants within a private residence; and

**WHEREAS**, On January 16, 2018, the City adopted Ordinance 848 amending the City of Sonora's ("City") Municipal Code, thereby authorizing commercial cannabis activity in the City; and

**WHEREAS**, the Sonora City Council ("City Council") seeks authorization to enact a tax on the gross receipts of cannabis businesses located in the City; and

**WHEREAS**, pursuant to Elections Code section 9222, the City Council desires to submit to the voters a measure and proposed ordinance relating to a general tax on cannabis businesses; and

**WHEREAS**, pursuant to Government Code section 53724, the City Council seeks to submit the cannabis business tax ordinance to the qualified electors of the City at the next Statewide General Election on November 6, 2018; and

**WHEREAS**, pursuant to Government Code section 53724, the City Council must approve this resolution by a two-thirds vote to submit the measure to the City's qualified voters; and

**WHEREAS**, Article XIII B of the California Constitution established the Gann limit, which imposes a ceiling on local government appropriations; and

**WHEREAS**, section 4 of Article XIII B permits the voters of a local jurisdiction to alter the appropriations limit by a majority vote for a period of no more than four (4) years; and

**WHEREAS**, the City Council seeks to increase the City’s appropriation limit by the amount of revenue raised by the proposed cannabis business license tax for the next four (4) fiscal years; and

**WHEREAS**, pursuant to Elections Code section 10400 *et seq.*, the City Council finds it necessary and desirable to request consolidation of this ordinance measure with the Tuolumne County Board of Supervisors and Registrar of Voters.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council for the City of Sonora as follows:

1. The foregoing recitals are true and correct and are hereby incorporated by reference.
2. Pursuant to California Elections Code section 9222, the City Council hereby calls an election to be held during the Statewide General Election on Tuesday, November 6, 2018, and orders that the following question be submitted to the voters at such election:

Shall the measure adopting an ordinance imposing a business license tax at a rate of up to fifteen percent (15%) of gross receipts on cannabis businesses, to help fund general municipal services; and increasing the City’s appropriations limit for the Fiscal Years 2019-2023 by the amount of tax proceeds received, be adopted?	YES	
	NO	

3. Pursuant to Elections Code sections 10002 and 10403, the City Council hereby requests that the Tuolumne County Board of Supervisors consolidate the election of this measure with the Statewide General Election, to be conducted on November 6, 2018, and that the consolidated election be held and conducted in the manner prescribed by Elections Code section 10418.

4. The City Council hereby requests that the Tuolumne County Board of Supervisors authorize the Tuolumne County Registrar of Voters to provide any and all services necessary to conduct the election, and the City agrees to pay for said services.

5. The City Council hereby directs the City Clerk to deliver certified copies of this Resolution to the Clerk of the Tuolumne County Board of Supervisors and the Tuolumne Registrar of Voters on or before June 25, 2018.

6. The City Attorney is hereby directed to prepare an impartial analysis of the measure pursuant to Election Code section 9280, to be submitted to the City Elections Official on or before July 25, 2018.

7. The City Council is hereby authorized and directed to form a two (2) member subcommittee to formulate, execute, and submit the argument in favor of the measure, limited to 300 words and shall include up to five (5) signatures, pursuant to Elections Code sections 9282 and 9283. The argument in favor shall be submitted to the City Elections Official on or before July 29, 2018.

8. The two (2) member subcommittee shall be authorized to formulate, execute, and submit a rebuttal to any argument submitted against the measure, limited to 250 words, and to include up to five (5) signatures pursuant to Elections Code sections 9285 and 9283, to be submitted to the City Elections Official on or before August 8, 2018.

9. The City Clerk and other City officers and employees are hereby authorized and directed to take all other actions that are necessary to have the City's measure properly submitted to the City voters at the Statewide General Election on November 6, 2018.

**PASSED AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF SONORA ON THIS 21st DAY OF MAY, 2018, BY THE FOLLOWING VOTE:**

AYES:  
NOES:  
ABSENT:

ABSTAIN:

APPROVED:

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Connie Williams  
Mayor of the City of Sonora

ATTEST:

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Marijane Cassinetto  
Sonora City Clerk

APPROVED AS TO FORM:

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Douglas L. White  
Sonora City Attorney

**CITY OF SONORA CITY COUNCIL  
ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE CITY OF SONORA ADOPTING CHAPTER 5.18,  
CANNABIS BUSINESS TAX, TO TITLE 5, BUSINESS TAXES, LICENSES, AND  
REGULATIONS, IMPOSING A BUSINESS LICENSE TAX AT A RATE OF UP TO  
FIFTEEN PERCENT (15%) ON THE GROSS RECEIPTS OF COMMERCIAL  
CANNABIS BUSINESSES IN CITY**

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Saf. Code, § 11362.5, and known as “The Compassionate Use Act of 1996” of “CUA”); and

**WHEREAS**, in 2003, the California legislature passed SB 420 (Medical Marijuana Program Act), which amended the Health and Safety Code to permit the establishment of medical cannabis dispensaries for the distribution of cannabis for medical purposes; and

**WHEREAS**, on October 9, 2015, Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643), collectively referred to as the Medical Marijuana Regulation and Safety Act (the “MMRSA”). MMRSA set up a state licensing system for commercial medical cannabis uses while also allowing cities to maintain local control of cannabis cultivation; and

**WHEREAS**, in 2016, the voters of California approved Proposition 64 entitled the “Control, Regulate and Tax Adult Use of Marijuana” (“AUMA”). AUMA legalized the adult use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and

**WHEREAS**, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in MMRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

**WHEREAS**, On January 16, 2018, the City of Sonora (“City”) adopted Ordinance 848 amending the City’s Municipal Code, thereby authorizing commercial cannabis activity in the City; and

**WHEREAS**, the Sonora City Council (“City Council”) seeks authorization to enact a tax on cannabis businesses; and

**WHEREAS**, this ordinance would tax businesses engaged in cannabis operations at a maximum rate of up to fifteen percent (15%) of monthly gross receipts, as directed by the City Council by resolution; and

**WHEREAS**, the City Council finds that it is in the best interest of the health, welfare, and safety of the public to submit this ordinance to the qualified voters of the City at the next Statewide General Election on November 6, 2018.

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF SONORA ORDAIN:**

**SECTION 1. Chapter 5.18, Cannabis Business Tax, of Title 5, Business Taxes, Licenses, and Regulations, of the City of Sonora Municipal Code shall be added to read as follows:**

**5.18.010 Definitions.**

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

“Business” means professions, trades, occupations, gainful activities, and all and every kind of calling whether or not carried on for profit.

“Cannabis” or “Marijuana” has the meaning as defined in California Health and Safety Code section 11018.

“Cannabis business” means any business activity involving the commercial cultivation, distribution, and exchange of cannabis, including but not limited to the, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, providing, wholesale and retail sales, whether fixed, mobile, permanent or temporary, where cannabis is made available, sold, given distributed, or otherwise provided in accordance with the existing laws of the State of California, whether for medical or non-medical reasons.

“City” means the City of Sonora, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

“Collector” means the Director of Finance or other City officer or employee charged with the administration of this chapter.

“Fixed place of business” means the premises occupied in the City for the particular purpose of conducting a business there and regularly kept open for that purpose with a competent person in attendance for the purpose of attending to such business.



“Gross receipts” means the total amount charged or received for the performance of any act, service or employment of whatever nature it may be, whether or not such service, act, or employment is done as a part of, or in connection with, the sale of goods, wares, or merchandise, for which a charge is made or credit allowed. Gross receipts shall be calculated without any deduction on account of any of the following: (i) the cost of tangible property sold or bartered; (ii) the cost of materials or products used, labor or service cost, interest paid, losses, or other expense; or (iii) transportation costs.

“Person” means all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, business or common law trusts, societies, and individuals transacting and carrying on any business in the City.

“Reporting Period” means a year, quarter, or calendar month, as determined by the collector.

#### **5.18.020 Cannabis Business Tax.**

A. Every person engaged in a cannabis business shall pay an annual business license tax of up to 15 cents for each \$1.00 of gross receipts, regardless of whether the City has authorized the cannabis business.

B. The tax rate shall be set by resolution of the City Council. The City Council may, in its discretion, implement such cannabis business tax rate as it deems appropriate, and may, by resolution, increase or lower such tax rate from time to time, provided that the cannabis business tax shall not exceed 15 cents for each \$1.00 of gross receipts.

C. The collector shall establish reporting periods for the periodic collection of gross receipts. The reporting period may fall under yearly, quarterly, or monthly reporting, or any reasonable reporting period established by the collector.

D. Failure to pay the cannabis business tax shall be subject to penalties, interest charges, and assessments as the City Council may establish by resolution, and the City may use any and all code enforcement remedies available at law to collect such payments.

E. The payment of the cannabis business tax 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 section shall be applied or construed as authorizing the sale of cannabis.

F. The collector or his or her designee shall annually audit any cannabis business taxes imposed by this section to verify that tax revenues have been properly expended in accordance with the law.

G. The cannabis business tax is not a sales tax and shall not be assessed as such.

H. This section was submitted to the qualified voters of the City for approval. Any amendment to the maximum tax rate therefore may 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 provisions of this section as the City Council deems necessary in the best interest of the City. The City Council or City Manager may promulgate rules, regulations, and procedures to implement this section and to ensure the efficient and timely collection of any taxes or any related penalties imposed by this section.

### **5.06.030 Appropriations Limit**

The revenues generated by this chapter shall not be subject to any appropriations limit established by Article XIII B of the California Constitution for the Fiscal Years 2019 through 2023. This section was duly adopted by the qualified voters of the City at the November 6, 2018, general election.

### **SECTION 2.**

This is a City Council sponsored initiative ordinance that shall only be amended by the qualified voters of the City as provided in the ordinance. The City Council reserves the right and authority to amend the ordinance as authorized, or at any time after a state or federal law is enacted which requires amendments, in order for the ordinance to be in compliance with such law or laws.

### **SECTION 3.**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The People of the City of Sonora hereby declare that they would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

### **SECTION 4.**

After its adoption by the voters, this ordinance shall be in full force and effect ten (10) days after the vote is declared by the legislative body, pursuant to the provisions of Elections Code sections 9217 and 15400, and as provided by law.

**Passed, Approved, and Adopted** on this \_\_\_\_ day of November, 2018.

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

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Connie Williams  
Mayor of the City of Sonora

ATTEST:

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Marijane Cassinetto  
Sonora City Clerk

APPROVED AS TO FORM:

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Douglas L. White  
Sonora City Attorney