

ORDINANCE 2024-003

**ORDINANCE OF THE PEOPLE OF THE CITY OF SAN PABLO
ADDING CHAPTER 5.11 TO TITLE 5 OF THE SAN PABLO MUNICIPAL CODE
IMPOSING A CANNABIS BUSINESS LICENSE TAX**

WHEREAS, the City Council of the City of San Pablo adopted the Fiscal Year 2023-2025 City Council Priority Workplan, effective May 1, 2023;

WHEREAS, under Major Policy Goal “Focus on Economic Development and Fiscal Diversification”, the 2023-2025 City Council Priority Workplan includes “Explore and Research Cannabis Commercial Uses and Impacts” as an adopted City Council Priority;

WHEREAS, on December 13, 2023, the City Council further amended the City Council Priority Workplan and Major Policy Goal “Focus on Economic Development and Fiscal Diversification” to include “New Strategic Budget Initiatives to Address New Structural Deficits Forecasted for FY 2025-2027 Period” which further includes “Identify New General Fund Annual Revenue Sources”; and

WHEREAS, to increase revenues in an effort to sustain the level of services, programs, and facilities enjoyed by residents, the City Council desires to ask the voters to adopt an ordinance that would impose a general tax on the privilege of conducting any cannabis business that may be authorized by the City of San Pablo.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF SAN PABLO DO
HEREBY ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT TO THE MUNICIPAL CODE. Chapter 5.11 of Title 5 of the San Pablo Municipal Code is hereby adopted to read as follows:

CANNABIS BUSINESS LICENSE TAX

5.11.010 – Purpose

This Ordinance is adopted for the following purposes and shall be interpreted to accomplish them:

- A. To impose a tax on the privilege of conducting cannabis business in the City, under the state Medicinal and Adult-Use Cannabis Regulation and Safety Act, California Business and Professions Code Section 26000 et seq. (“MAUCRSA”), as amended to date, and other applicable law as it now exists or may hereafter be adopted;
- B. To impose a general tax that generates revenues which may be used for any lawful purpose of the City in the discretion of the City Council;

- C. To specify the type of tax and rate of tax to be levied and the method of collection; and
- D. To comply with all requirements for imposition of a general tax.

This chapter is enacted solely to raise revenue, not for regulation. It shall apply to all persons engaged in cannabis business in the City whether or not they do so in compliance with other laws, including other provisions of this Code. The tax imposed by this chapter is a general tax under Article XIII C of the California Constitution.

5.11.020 – Definitions

For the purposes of this chapter, the following words shall have the meanings ascribed to them by this section unless the context makes apparent another meaning was intended.

“Cannabis” means all parts of the plant *Cannabis sativa Linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds of such plants. “Cannabis” also means cannabis as defined by Business and Professions Code Section 26001, subdivision (f), Health and Safety Code Section 11018, and by other state law.

“Cannabis accessory” means any device intended to aid in the use of cannabis or cannabis products which does not itself consist in all or part of cannabis or cannabis products and includes, without limitation, “cannabis accessories” as defined in Health and Safety Code Section 11018.2 and by other state law.

“Cannabis business” means the activity of any person in the City relating to cannabis whether or not lawful, including but not limited to cultivation (including nurseries), transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, delivery, and sales (including both wholesale and retail sales) of cannabis, cannabis products, or cannabis accessories, whether or not carried on for gain or profit, whether for medical or adult use, and whether or not such business is licensed by the State of California. A cannabis business does not include any business the only relationship of which to cannabis or cannabis products is the production or sale of cannabis accessories.

“Cannabis cultivation area” means the total aggregate area(s) of cannabis cultivation on one or more parcels in the City by a cannabis business as measured around the outermost perimeter of each separate and discrete area of cannabis cultivation at the dripline of the canopy expected at maturity and includes, but is not limited to, space between plants within a cultivation area, the exterior dimensions of garden beds, garden plots, hoop houses, green houses, and each room or area where cannabis plants are grown, as determined by the City Manager. The City Manager may, but is not required, to determined cannabis cultivation area from the area described in a cultivation license issued by the City whether or not the licensee actually cultivates that entire area.

“Cannabis product” means any product containing cannabis or its derivatives, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles and products described in Health and Safety Code Section 11018.1.

“Canopy” means the designated area(s) at a licensed premises that does, or is proposed to, contain mature plants at any time. If mature plants are cultivated using a shelving system, the surface area of each level shall be included when calculating canopy area. Canopy area shall be expressed in square feet and measured using clearly identifiable boundaries of all areas that will contain mature plants at any time, including the entire area with those boundaries. Canopy may be noncontiguous, but each noncontiguous area shall be defined by an identifiable boundary such as an interior wall or by 10 feet or more of open space. The City Manager may, but is not required, to determine canopy from the area described in a cultivation license issued by the City whether or not the licensee actually cultivates that entire area.

“City” means the City of San Pablo.

“Collector” means the director of finance or another City officer or employee the City Manager charges to administer this chapter.

“Commercial cannabis cultivation” means cultivation conducted by, for, or as part of a cannabis business. Commercial cannabis cultivation does not include personal medical cannabis cultivation, or cultivation for personal adult use as authorized by the MAUCRSA, including Health and Safety Code Section 11362.2, for which the individual receives no compensation whatsoever, monetary or otherwise.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Delivery” means the transfer for any form of compensation, monetary or otherwise, of cannabis or cannabis products to a customer or caregiver at a location that is not a dispensary.

“Dispensary” means a place at which cannabis, cannabis products, or accessories for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including, without limitation, a dispensary that engages in delivery.

“Distributor” means a person engaged in procuring cannabis and/or cannabis products for sale to a dispensary or other point of retail sale. “Distribution” means engaging in that conduct, and a “distribution facility” is any real estate, whether or not improved, used in such conduct.

“Gross receipts” means the total consideration actually received or receivable from all sales, 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 part of, or in connection with, the sale of materials, goods, wares or merchandise; and gains realized from trading in stocks or bonds, interest income, carrying charges, rents,

royalties, fees, commissions, dividends, or other emoluments, however designated. Included in “gross receipts” are all receipts, cash, credits, and consideration of any kind or nature, without any deduction 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 from “gross receipts”:

- A. Any tax required by law to be included in or added to the purchase price and collected from the customer or purchaser;
- B. Cash discounts allowed and taken on sales;
- C. Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded in either cash or by credit;
- D. Amounts collected for others where the business is acting as an agent or trustee, to the extent that such amounts are paid to those for whom collected; provided, that the business furnish the Collector with the names and addresses of the others and the amounts paid to them;
- E. Receipts of refundable deposits, except that refundable deposits forfeited and taken into the income of the business shall not be excluded;
- F. Amounts received or receivable by persons having a fixed place of business within the City for acts or services performed outside the City, but only to the extent a business tax has not been paid to the county, counties, city or cities in which the acts or services were performed.

“Manufacturer” means a person who engages in the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

“Person” has the meaning stated in Section 5.04.010 of this Code.

5.11.030 – Cannabis Business Tax

- A. A cannabis business tax is hereby imposed upon each person engaged in business as a cannabis business in the City.
- B. The initial rate of the cannabis business tax shall be as follows:
 - 1. For every person who is engaged in commercial cannabis cultivation in the City:
 - (a) Eight Dollars (\$8.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.

- (b) Six Dollars (\$6.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
- (c) Four Dollars (\$4.00) annually per square foot of canopy space in a facility that uses no artificial lighting.
- (d) Two Dollars (\$2.00) annually per square foot of canopy space for any nursery.

Should a City permit be issued to a business which cultivates only for certain months of the year, the City shall prorate the tax to reflect the period of cultivation. In no case shall canopy square footage which is authorized by the City commercial cannabis permit but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation, unless the Collector is informed in writing before the period for which the space will not be used that such space will not be used and authorizes relief from the tax.

- 2. For every person who operates a testing laboratory: Two Percent (2%) of gross receipts.
- 3. For every person who operates a dispensary or delivery business: Five Percent (5%) of gross receipts.
- 4. For every person who engages in a cannabis manufacturing, processing, distribution, or any other cannabis business not described in subdivisions (B)(1), (2), or (3) above: Four Percent (4%) of gross receipts.

C. The City Council may, by resolution or ordinance, adjust the rate of the cannabis business tax up to the following maxima:

- 1. For every person who is engaged in commercial cannabis cultivation in the City:
 - (a) Through June 30, 2025, the maximum rate shall be:
 - (i) Ten Dollars (\$10.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
 - (ii) Eight Dollars (\$8.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.

- (iii) Four Dollars (\$4.00) annually per square foot of canopy space in a facility that uses no artificial lighting.
 - (iv) Two Dollars (\$2.00) annually per square foot of canopy space for any nursery.
 - (b) On July 1, 2025 and on each July 1 thereafter, the maximum canopy taxes shall be adjusted (and rounded to the nearest cent) based on the year-over-year percentage change in the Bureau of Labor Statistics Consumer Price Index, San Francisco Bay area – All Urban Consumers (CPI-U) April to April comparison, or if such index is discontinued, a comparable or successor consumer price index designated by the Collector. However, no CPI adjustment shall reduce any tax imposed by this section.
- 2. For every person who engages in the operation of a testing laboratory, the maximum tax rate shall not exceed Two Percent (2%) of gross receipts.
- 3. For every person who engages in the retail sales of cannabis as a dispensary or delivery business, the maximum tax rate shall not exceed Seven Percent (7%) of gross receipts.
- 4. For every person who engages in a cannabis manufacturing, processing, distribution, or any other type of cannabis business not described in Section (C)(1), (2), or (3), the maximum tax rate shall not exceed Six Percent (6%) of gross receipts.
- D. The City Council may, by resolution, implement a tax rate lower than the maximum rate established in subdivisions (B) and (C) of this section for all persons engaged in cannabis business, or establish differing tax rates for different categories of cannabis business. The City Council may, by resolution and without further voter approval, also decrease or increase such tax rates provided that the tax rate is not above the maximum tax rate established in subdivision (C) of this section.

5.11.040 – Registration of Cannabis Businesses

- A. Each person engaging in a cannabis business shall register with the Collector's office by the later of:
 - 1. Before commencing operation, or
 - 2. January 1, 2025.

- B. Registrants shall submit the following information to the Collector in writing:
 - 1. Every name under which the business engages in commercial cannabis activity in the City;
 - 2. The names and addresses of every person who is an owner, principal or manager of the business;
 - 3. The nature or kind of all business activity to be conducted;
 - 4. The place or places where such business is to be conducted; and
 - 5. Any further information which the Collector reasonably requests to aid the administration of this chapter.
- C. The Collector may establish a form for registrations under this chapter and, if so, use of that form shall be mandatory.
- D. Registrants shall annually renew registration by the anniversary of the initial registration for that business by providing the Collector current information as described in subdivision (B) of this section.
- E. The City Council may establish fees to recover the City's cost to register and re-register cannabis businesses and to otherwise enforce this chapter.

5.11.050 – Payment Obligations

Each person subject to a tax under this chapter shall pay that tax regardless of any rebate, exemption, incentive, or other reduction elsewhere in this Code, except as required by state or federal law. Failure to pay such a tax shall be subject to penalties, fines and interest charges established under this chapter. Further, any person violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to the City any material fact in registering under this chapter shall be deemed guilty of a misdemeanor punishable under Chapters 1.08, 1.10, or 1.12 of this Code, provided, however, that any violation or offense may be deemed an infraction punishable under this Code and charged as such if the prosecutor determines it is in the interest of justice to do so, in which event the punishment therefor shall not be imprisonment but a fine not to exceed the amounts specified by this Code as then in effect. Every day a violation of any provision of this chapter continues constitutes a separate offense.

5.11.060 – Tax Payment Does Not Authorize Activity

The payment of a tax imposed under this chapter shall not be construed to authorize the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter authorizes or implies the lawfulness of any activity connected with the distribution or possession of cannabis unless otherwise authorized

and allowed in strict and full conformance with this Code, including but not limited to provisions of this Code concerning zoning and land use. Nothing in this chapter shall be applied or construed as authorizing the sale of cannabis.

5.11.070 - Cannabis Tax Is Not a Sales Tax

The tax imposed by this chapter is upon the privilege of doing business in the City. It is not a sales or use tax.

5.11.080 – Returns and Remittances

The tax imposed by this chapter shall be due and payable as follows:

- A. Each person owing tax under this chapter shall provide a tax return to the Collector, by the last business day of each month, stating the tax owed for the preceding month and the basis of its calculation. The taxpayer shall remit the tax owed to the Collector when the return is due.
- B. The Collector may establish a form for tax returns submitted under this section and, if so, use of that form shall be mandatory.
- C. Tax returns and payments for all outstanding taxes, fees, penalties and interest owed the City are immediately due upon cessation of business for any reason.
- D. Whenever a payment, statement, report, request or other communication is received by the Collector after the time prescribed by this section for its receipt, but is in an envelope postmarked by the date prescribed by this section for its receipt, the Collector shall regard such payment, statement, report, request, or other communication as timely. If the due date falls on a day when City offices are not open for business, the due date shall be the last business day before that due date.
- E. Unless otherwise provided by this chapter, the taxes imposed by this chapter shall be delinquent if not paid by the due date specified in subdivision (A) of this section.
- F. The Collector need not send a delinquency or other notice or bill to any person subject to a tax or fee imposed by this chapter and failure to send such notice or bill shall not affect the obligation to pay any tax, fee, interest or penalty due under this chapter.

5.11.090 – Audits

The Collector shall arrange for an annual independent audit of the receipts and expenditures of the taxes imposed by this chapter. He or she shall share that audit report with the City Council and make it available for public inspection.

5.11.100 – Refunds

- A. The City shall refund no tax collected under this chapter, except as provided in this section.
- B. The City shall refund no tax collected under this chapter because of the discontinuation, dissolution, or other termination of a cannabis business.
- C. Any person entitled to a refund pursuant to subdivision (D) below may elect to have such refund applied as a credit against future obligations under this chapter.
- D. If a tax, fee, penalty, or interest under this chapter has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City, such amount shall be refunded to the person who paid the tax upon a timely written claim for refund filed with the City Manager.
- E. The Collector may examine and audit all the books and business records of the claimant to determine eligibility to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of the claimant's books and business records.
- F. A sum erroneously paid under this chapter due to an error of the City shall be refunded to the claimant in full upon a timely claim. If an error is attributable to the claimant, the City may retain an amount established by resolution of the City Council to recover the City's cost to process the claim and refund the balance.

5.11.110 – Tax Administration

- A. The Collector shall administer this chapter.
- B. The Collector may make such rules and regulations not inconsistent with this chapter as may be necessary or desirable to supplement or clarify such provisions or aid in their enforcement and shall give notice of them as required for ordinances of the City Council, post them to the City's website, or both.
- C. The Collector may take such administrative actions as needed to administer the tax, including but not limited to:
 - 1. Provide information to any taxpayer about this chapter;
 - 2. Receive and record all taxes remitted to the City as provided in this chapter;
 - 3. Maintain records of taxpayer reports and taxes collected under this chapter;

4. Assess penalties, fines and interest charges to taxpayers under this chapter;
 5. Determine amounts owed and enforce collection under this chapter; and
 6. Take such other reasonable steps as he or she deems appropriate to enforce this chapter.
- D. The City Council may establish by ordinance or resolution penalties, fines, and interest charges related to this chapter.

5.11.120 – Appeals

Any person aggrieved by any decision of the City under this chapter may appeal to the City Council pursuant to the procedures described in Section 5.04.150 of this Code. The City Council may, but need not, appoint a hearing officer to conduct a hearing on the appeal and render written findings of fact and conclusions of law for the City Council's consideration. The decision of the City Council shall be final as to the City but subject to judicial review pursuant to California Code of Civil Procedure Section 1094.5.

5.11.130 – Consistency with Business License Tax

The City Council intends this chapter to be enforced consistently with Chapter 5.04 of this Code and any rule or regulation promulgated under that chapter except as provided to the contrary in this chapter or rules or regulations promulgated pursuant to it.

5.11.140 – Constitutionality and Legality

- A. This tax is intended to be applied consistently with the United States and California Constitutions and other state law. The tax shall not be applied to cause an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California, to constitute a special tax, or to violate any other provision of law.
- B. Taxes imposed under this chapter are excises on the privilege of engaging in commercial cannabis activity in the City. It is not a sales or use tax and shall not be calculated or assessed as such. Nevertheless, at the option of a commercial cannabis business, the tax may be separately identified on invoices, receipts and other evidences of transactions.

SECTION 2. AMENDMENT. This Ordinance may be amended by the City Council without a vote of the people provided, however, that voter approval is required for any amendment that would increase, within the meaning of Government Code Section 53750(h), the tax rate beyond the maximum rates authorized by this Ordinance.

SECTION 3. CEQA. The City Council finds that this Ordinance is exempt from the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (“CEQA”). It can be seen with certainty that there is no possibility that this Ordinance may have a significant effect on the environment. (14 CCR § 15061(b)(3).) Further, this Ordinance simply creates a government funding mechanism, which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. (14 CCR § 15378(b)(4).)

SECTION 4. SEVERABILITY. If any sections, subdivisions, sentences, clauses, phrases, or portions of this Ordinance are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The People of the City of San Pablo hereby declare that they would have passed this Ordinance and each section, subdivision, phrase, or clause of this Ordinance whether or not any one or more sections, subdivisions, phrases, or clauses be declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE. Pursuant to Elections Code Sections 9217 and 9122, this Ordinance shall take effect 10 days after certification of its approval by a majority of the electorate voting at the general election to be held November 5, 2024.

SECTION 6. CERTIFICATION. The Mayor shall sign, and the City Clerk shall attest to the passage of, this Ordinance upon certification by the City Council of the results of the election approving it.

ATTEST:

APPROVED:

Dorothy Gantt, City Clerk

Patricia Ponce, Mayor