

**ORDINANCE NO. 1651(18)**

**An Ordinance of the People of the City of Lompoc,  
County of Santa Barbara, State of California,  
Approving Taxes on Commercial Cannabis Business Activities by  
Adding Chapter 3.50 (Cannabis Taxes) to the Lompoc Municipal Code**

**WHEREAS**, because all commercial cannabis business, except outdoor cultivation, are allowed in the City of Lompoc (City) pursuant to Chapter 9.36 of the Lompoc Municipal Code (LMC), the City Council desires taxes be imposed on commercial cannabis businesses; and

**WHEREAS**, pursuant to Subdivision (b) of Section 2 of Article XIII C of the California Constitution and Section 53720 *et seq.* of the Government Code, the City Council is authorized to impose a general tax upon submission of such general tax to the voters of the City and approval by a majority of the voters voting on the issue, at an election consolidated with a regularly scheduled general election for members of the City Council; and

**WHEREAS**, Business & Professions Code subdivision 19320(d) provides local jurisdictions retain the power to assess fees and taxes, as applicable, on medical cannabis operations that are licensed pursuant to the Medical Marijuana Regulation and Safety Act (MMRSA); and

**WHEREAS**, MMRSA and the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) do not preempt local taxation of cannabis business activities; and

**WHEREAS**, presently the City has no local tax specifically imposed on commercial cannabis businesses; and

**WHEREAS**, the City Council estimates the City could collect approximately between \$130,000 to \$490,000 in local tax revenue annually; and

**WHEREAS**, the City Council finds taxation of commercial cannabis businesses and cannabis products can generate the revenue needed by the City to ensure its citizens and visitors are safe and cannabis operations comply with the City's standards; and

**WHEREAS**, the City Council further finds tax revenue from commercial cannabis businesses and cannabis products can provide funds for additional City services to protect the general health and welfare of the citizens of the City.

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF LOMPOC, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Chapter 3.50 (Cannabis Taxes) is hereby added to the LMC to read as follows:

## **CHAPTER 3.50 CANNABIS TAXES**

- Section 3.50.010. Expenditure of Cannabis Taxes Revenue
- Section 3.50.020. Definitions.
- Section 3.50.030. Tax.
- Section 3.50.040. Operation.
- Section 3.50.050. Returns and Remittances.
- Section 3.50.060. Failure to Pay Tax.
- Section 3.50.070. Refunds.
- Section 3.50.080. Enforcement.
- Section 3.50.080. Debts; Deficiencies; Determinations; Hearings.

### **Section 3.50.10. Expenditure of the Cannabis Taxes Revenue**

The revenue generated by the cannabis taxes imposed by this chapter may be spent for any unrestricted general purpose.

### **Section 3.50.020. Definitions.**

- A. The definitions contained in Chapter 9.36 of this code shall apply to this chapter, unless otherwise expressly stated or the context otherwise requires.
- B. The following definitions apply to this chapter unless the context otherwise requires.
  - 1. "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients, including, but not limited to, edible cannabis products.
  - 2. "Location" means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area. Where contiguous parcels are under common ownership or control, such contiguous parcels shall be counted as a single "location." For purposes of this chapter "premises" shall have the same meaning as "location."
  - 3. "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, at a fixed location that packages or repackages cannabis or cannabis products or labels or re-labels its container.
  - 4. "Management Services Director" shall mean the Management Services Director/Finance Director/Treasurer of the City of Lompoc and her/his designee.

5. "Net income" means total revenue and moneys received by a commercial cannabis activity, minus costs of doing business, such as deductions and allowances for rent, depreciation, cost of goods sold, labor costs, losses, interest and taxes.
6. "Operation" means an activity permitted by this chapter, including the retail distribution, dispensary, delivery, cultivation, manufacture, or testing of cannabis or cannabis products.
7. "Permit" means a regulatory license issued pursuant to Chapter 9.36 of this code, and such permit constitutes a "local permit, license, or other authorization" as used in Subdivision 19320(a) of the Business & Professions Code.
8. "Person" means any natural person, firm, corporation, partnership, club, or any association or combination of natural persons, whether acting by themselves or through any servant, agent or employee.
9. "Proceeds" means total revenue and moneys received by a commercial cannabis activity before any deductions or allowances, including, but not limited to, rent, depreciation, cost of goods sold, labor costs, losses, interest and taxes.

**Section 3.50.030. Tax.**

- A. Cannabis Cultivation Tax. Every person cultivating commercial cannabis within the City, including nurseries, whether for profit or by a non-profit organization, either pursuant to this code or otherwise, and regardless of whether such operation has a valid permit pursuant to this code, shall pay an annual maximum tax of up to 1% of proceeds.
- B. Cannabis Retail Operations Tax. Every person engaged in any commercial cannabis business for the delivery, dispensing or retail sale of cannabis, or a cannabis product, whether fixed or mobile, as part of a for-profit or non-profit business within the City, either pursuant to this code or otherwise, and regardless of whether such operation has a valid permit pursuant to this code, shall pay to the City a maximum of up to 6% of proceeds received for non-medical cannabis transactions.
- C. Cannabis Manufacturing/Distribution Tax. Every person engaged in any commercial cannabis manufacturing or distribution business, as part of a for-profit or non-profit business within the City, either pursuant to this code or otherwise, and regardless of whether such operation has a valid permit pursuant to this code, shall pay to the City an annual flat fee tax of \$15,000 if net income is less than \$2 Million and of \$30,000 if net income is \$2 Million or more.
- D. Cannabis Testing. No separate tax shall be assessed for any cannabis testing business.

- E. Cannabis Microbusiness Tax. Every person engaged in any commercial cannabis microbusiness, as part of a for-profit or non-profit business within the City, either pursuant to this code or otherwise, and regardless of whether such operation has a valid permit pursuant to this code, shall pay taxes to the City in accordance with this section based on the type of cannabis business, but up to an aggregate total of 6% of proceeds for the microbusiness, not including proceeds received for retail medical cannabis transactions.
- F. The taxes imposed by this chapter are in addition to all other applicable taxes imposed by this code, including, but not limited to, the business taxes imposed by Chapter Title 5 of this code.

**Section 3.50.040. Operation.**

- A. Failure to pay the taxes set forth in this chapter shall be subject to penalties, interest charges, and determinations of tax due as the City Council may establish and the City may use any or all other enforcement remedies provided for in this code, or pursuant to state law.
- B. The City Council may impose the tax authorized by this chapter at a lower rate and may establish exemptions, incentives, or other reductions, and penalties and interest charges, or determinations of tax due for failure to pay the tax in a timely manner, as otherwise allowed by Code or California law. No action by the City Council under this section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax specified in this chapter.
- C. The payment of the tax required pursuant to this chapter 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 chapter shall be construed to authorize any cannabis business activity.
- D. Taxes provided for hereunder are not sales or use taxes and shall not be calculated or assessed as such.
- E. The taxes imposed pursuant to this chapter shall not be separately identified or otherwise specifically assessed or charged to any individual member, consumer or customer; rather, the taxes are imposed upon each applicable commercial cannabis activity.
- F. The Management Services Director shall promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the tax imposed by this chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

**Section 3.50.050. Returns and Remittances.**

The Tax shall be due and payable as follows:

- A. Each person owing tax, on or before the last business day of each term, as established by the Management Services Director, shall prepare a tax return to the Management Services Director of the total proceeds/net income, as applicable, and the amount of tax owed for the preceding term. At the time the tax return is filed, the full amount of the tax owed for the preceding term shall be remitted to the City.
- B. All tax returns shall be completed on forms provided by the Management Services Director.
- C. Tax returns and payments for all outstanding taxes owed the City are immediately due the Management Services Director upon cessation of business for any reason.
- D. Whenever any payment, statement, report, request or other communication received by the Management Services Director is received after the time prescribed by this section for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this section for the receipt thereof, or whenever the Management Services Director is furnished substantial proof that the payment, statement, report, request, or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the Management Services Director may regard such payment, statement, report, request, or other communication as having been timely received. If the due day falls on Saturday, Sunday, or a federal holiday, then the due day shall be the last regular business day on which the City Hall is open to the public prior to the due date.
- E. Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not paid on or before the due date specified by this section.
- F. The Management Services Director is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

**Section 3.50.060. Failure to Pay Tax.**

Any person who fails, or refuses, to pay any tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:

- A. A penalty of no more than 25% of the amount of the tax (in addition to the amount of the tax), plus interest (determined on a daily basis and a 365 day year) on the unpaid tax calculated from the due date of the tax at a rate not to exceed 10% and these penalties

and rates will be set at the maximum amounts unless established otherwise by resolution of the City Council.

- B. Whenever a check is submitted in payment of a tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the amount of taxes due, plus penalties and interest as provided for in this section plus any amount allowed under state law.
- C. The taxes due shall be the amount due and payable from the operative date of this chapter.
- D. The Management Services Director may waive the up to the first and second penalties of 25% each imposed upon any person for the failure to timely pay taxes pursuant to this section if:
  - 1. The person provides evidence satisfactory to the Management Services Director failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent taxes and accrued interest owed the city prior to applying to the Management Services Director for a waiver.
  - 2. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent taxes and a waiver shall be granted only once during any 24-month period for taxation of proceeds.
  - 3. Notwithstanding Section 3.50.060 (D) (1), imposition of the third (or more) penalty of 25% for failure to pay taxes within any 24-month period shall not be considered for waiver.

**Section 3.50.070. Refunds.**

- A. No refund shall be made of any taxes collected pursuant to this chapter, except as provided in this Section.
- B. No refund of any taxes collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of an operation.
- C. Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to the Management Services Director to have such refund applied as a credit against cannabis taxes due for the next term.
- D. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City under this chapter, such amount may be refunded to the person who paid the taxes (claimant);

provided, that a written claim for refund is filed with the City Clerk and Management Services Director.

- E. The Management Services Director shall have the right to examine and audit all the books and business records of the claimant, or to have all the books and business records of the claimant examined and audited, in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Management Services Director to do so.
- F. In the event the tax was erroneously paid and the error is attributable to the City, the entire amount of the taxes erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, then the City shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.
- G. The Management Services Director shall initiate a refund of any taxes, which have been overpaid or erroneously collected, whenever the overpayment or erroneous collection is uncovered by a City initiated audit of tax receipts. In the event the taxes were erroneously paid and the error is attributable to the City, the entire amount of the taxes erroneously paid shall be refunded to the person who paid the taxes. If the error is attributable to the person, then the City shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.

**Section 3.50.080. Enforcement.**

- A. It shall be the duty of the Management Services Director to enforce each and all of the provisions of this chapter.
- B. For purposes of administration and enforcement of this chapter generally, the Management Services Director, with the assistance of the City Attorney, may from time to time promulgate administrative rules and regulations.
- C. The Management Services Director shall have the power to, or have done, audit and examine all books and records of operations as well as persons engaged in the conducting of an operation, including both state and federal income tax returns, California sales tax returns, logs, receipts, bank records, or other evidence documenting the proceeds of the operation, or persons engaged in the conduct of an operation, for the purpose of ascertaining the amount of Tax, if any, required to be paid by the provisions of this chapter, and for the purpose of verifying any statements or any items thereof when filed by any person pursuant to the provisions of this chapter. If such operations or person, after written demand by the Management Services Director, refuses to make available for audit, examination or verification such books, records, or equipment as the Management Services Director requests, the Management Services Director may, after full consideration of all information within the Management Services Director's knowledge concerning the operation and activities of the person so refusing, make a determination of tax due in the manner provided in Section 3.50.080 of this chapter.

- D. The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.
- E. Any person violating any of the provisions of this chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any officer or employee of the city any material fact in procuring permits from the City as provided for in this chapter, shall be deemed guilty of a misdemeanor.

**Section 3.50.090. Debts; Deficiencies; Determinations; Hearings.**

- A. The amount of any tax, penalties, and interest imposed by the provisions of this chapter shall be deemed a debt to the City and any person conducting an operation without also making payment to the City of the taxes imposed by this chapter shall be liable in an action in the name of the City in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such operation.
- B. If the Management Services Director is not satisfied any statement filed as required under the provisions of this chapter is correct, or the amount of tax is correctly computed, then he/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 an operation, 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.
- C. Under any of the following circumstances, the Management Services Director may make and give notice of a determination 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 Management Services Director, filed a corrected statement or return, or furnished to the Management Services 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.
  - 4. If the Management Services Director determines the nonpayment of any tax due under this chapter is due to fraud, then a penalty of 25% of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter.



5. The notice of determination shall separately set forth the amount of any tax known by the Management Services Director to be due, or estimated by the Management Services Director, after consideration of all information within the Management Services Director's knowledge concerning the business and activities of the person assessed, 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 determination.
  6. The notice of determination shall be served upon the person either by handing it to him/her/it (through an officer or clerk) 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 tax certificate issued under this code, or to such other address as he/she/it shall register with the Management Services Director for the purpose of receiving notices provided under this chapter; or, if the person has no business tax certificate issued, and if the person has no address registered with the Management Services Director for such purpose, then to such person's last known address. For the purposes of this section, service by mail is complete at the time of deposit in the United States mail.
- D. Within 10 days after the date of service of a determination of the amount of tax owed by a person under this chapter, the person may apply in writing to the Management Services Director for a hearing on the determination. If application for a hearing before the City is not timely made, then the tax assessed by the Management Services Director shall become final. The procedures for such a hearing shall be conducted as required by law and as follows:
1. The City Council delegates its authority to conduct such a hearing on the determination to an independent hearing officer. The compensation of the hearing officer shall not depend on any particular outcome of the appeal. The hearing officer shall have full authority and duty to preside over the hearing on the determination in the manner set forth herein and as required by law.
  2. Within 30 days after the receipt of any such application for hearing, the Management Services Director shall cause the matter to be set for hearing before the independent hearing officer, unless a later date is agreed to by the Management Services Director and the person requesting the hearing.
  3. Notice of the hearing shall be given by the Management Services Director to the person requesting the hearing not later than five days prior to the date of the hearing. For good cause, the hearing officer may continue the administrative hearing from time to time. At the hearing the applicant may appear and offer evidence to show why the determination as made by the Management Services Director should not be confirmed and fixed as the tax due. In conducting the hearing, the hearing officer shall not be limited by the technical rules of evidence. Failure of the person who applied for a hearing on the determination to appear shall not affect the validity of the proceedings or order issued thereon.

4. Upon conclusion of the hearing, or no later than 10 days after the conclusion of the hearing, the hearing officer shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in this chapter for giving notice of determination, and the hearing officer shall submit its decision and the record to the City Clerk. The decision of the hearing officer shall be final.

**SECTION 2. Effective Date.**

If a majority of the voters of the City voting at the General Municipal Election of November 6, 2018, vote in favor of this Ordinance, then this Ordinance shall become a valid and binding ordinance of the City, and shall be considered as adopted upon the date the vote is declared by the City Council, and this Ordinance shall go into effect 10 days after that date, pursuant to Election Code section 9217.

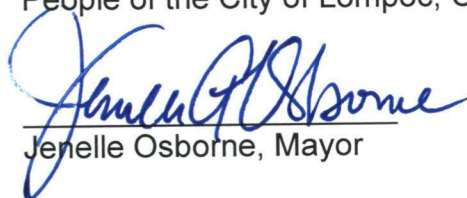
**SECTION 3. City Council Authority to Amend**

This is a City Council sponsored initiative Ordinance, which otherwise would only be subject to amendment by the voters of the City. However, pursuant to Section 9217 of the California Elections Code, the City Council expressly reserves the right and authority to amend the Ordinance, and Chapter 3.50 of the LMC, to further the purposes and intent of the Ordinance (including, but not limited to, suspending or reducing any tax established herein or thereby an amendment for more efficient administration as determined by the City Council) in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

**SECTION 4. Execution.**

The Mayor of the City of Lompoc is hereby authorized and ordered to attest to the adoption of the Ordinance by the voters of the City by signing where indicated below.

I hereby certify the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Lompoc, California voting on the 6<sup>th</sup> day of November, 2018.

  
Jenelle Osborne, Mayor

ATTEST:

  
Stacey Haddon, City Clerk