

ORDINANCE 1528

AN ORDINANCE OF THE PEOPLE OF THE CITY OF BANNING, CALIFORNIA AMENDING TITLE 3 (REVENUE AND FINANCE) OF THE BANNING MUNICIPAL CODE TO ADD A NEW CHAPTER 3.15 TO ADOPT A GENERAL PURPOSE TAX ON CANNABIS RETAILERS

THE PEOPLE OF THE CITY OF BANNING DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

A. On October 9, 2015 Governor Brown signed Assembly Bill 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively were known as the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"). The MCRSA established a State regulatory and licensing scheme for commercial medical cannabis businesses.

B. On November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"). The AUMA made it lawful under State and local law for persons 21 years of age or older to possess and cultivate limited quantities of cannabis for personal use. The AUMA also established a State regulatory and licensing scheme for commercial adult-use cannabis businesses.

C. On June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medicinal and adult-use cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether cannabis businesses could operate in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under the MAUCRSA including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more businesses licensed by the State, within that local jurisdiction.

D. Cannabis retail sales are currently prohibited in the City of Banning. The City of Banning finds that unregulated cannabis retailers affect the public health and safety of Banning residents and divert code enforcement and law enforcement resources to combatting these illegal businesses. The establishment of a regulatory permitting process for cannabis retailers will reduce this threat to the public health and safety, and allow code enforcement and law enforcement efforts to be focused on unregulated businesses which pose greater threats to the public, particularly the youth.

E. The City Council will be adopting an ordinance allowing for the issuance of cannabis regulatory permits to cannabis retailers to operate in certain commercial zones. The City Council will also be adopting an ordinance establishing zoning regulations and procedures for the issuance of cannabis conditional use permits to cannabis retailers in the City. Both ordinances will only go into effect on January 1, 2019 if the Banning voters approve this tax measure.

F. The City of Banning seeks to require all cannabis retailers, as such term is defined in this Ordinance, to pay their fair share of taxes to fund vital City services.

G. Sections 37101 and 37100.5 of the California Government Code authorize the City to levy a tax on businesses operating in the City for revenue purposes.

H. The City Council estimates that this tax on cannabis retailers could generate between \$1,168,800 and \$1,558,400, based on an analysis of the number of potential parcels in the eligible commercial zones that could allow cannabis retailers to operate on the parcels.

I. The People further declare that this tax shall be levied for unrestricted general government purposes and shall be levied only if approved by the majority of the voters voting on this Ordinance at the November 6, 2018 General Municipal Election.

SECTION 2. Title 3 of the Banning Municipal Code is hereby amended to add the following Chapter 3.15 “Cannabis Retailer Tax” to read as follows:

“Chapter 3.15 Cannabis Retailer Tax

Sections:

- 3.15.010 Purpose.
- 3.15.020 Definitions.
- 3.15.030 Tax imposed on cannabis retailers.
- 3.15.040 Tax can be spent for unrestricted general revenue purposes.
- 3.15.050 Modifications to tax.
- 3.15.060 Reporting and remittance of tax.
- 3.15.070 Payments and communications - Timely remittance.
- 3.15.080 Notice not required by the City.
- 3.15.090 Non-payment of tax; Penalties and interest.
- 3.15.100 Refund procedures.
- 3.15.110 Administration of tax.
- 3.15.120 Enforcement - Action to collect.
- 3.15.130 Audit and examination of records.
- 3.15.140 Other licenses, permits, fees.
- 3.15.150 Payment of tax does not authorize unlawful business.
- 3.15.160 Appeals procedures.
- 3.15.170 Amendments.

3.15.010 Purpose.

This Chapter shall be known as the Cannabis Retailer Tax. It is the intent of the voters to permit the collection of such tax at the maximum rate allowed by state law from every cannabis retailer operating in the City regardless of whether the cannabis business is operating lawfully under State or local law. Nothing in this Chapter shall be interpreted to authorize or permit any commercial cannabis activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

3.15.020 Definitions.

A. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Chapter, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

B. "Cannabis retailer" means a business that engages in the retail sale and delivery of cannabis or cannabis products to customers.

C. "Cannabis products" has the same meaning as in Section 11018.1 of the Health and Safety Code.

D. "City" means the City of Banning.

E. "Commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products, or engaging in any other cannabis activity that requires a state license issued by a licensing authority.

F. "Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the cannabis retail business.

G. "Gross receipts" means the total amount of the sale price of all sales and the total amount charged or received for the performance of any act, service or employment of whatever nature it may be for which a charge is made or credit allowed, whether or not such act, service or employment is done as a part of or in connection with the sale of materials, goods, wares, or merchandise. Included in gross receipts shall be all receipts, cash, credits and property of any kind or nature, and any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom on account of the cost of the property sold, the cost of the materials used,

labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from gross receipts shall be cash discounts allowed and taken on sales, any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser, and such part of the sale price of the property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit.

H. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

I. "Tax Administrator" means the Finance Manager of the City of Banning, his or her designee(s), or any other City officer charged with the administration of the provisions of this Chapter.

3.15.030 Tax imposed on cannabis retailers.

A. There is established and imposed upon each person who is engaged in business as a cannabis retailer an annual tax at the rates set forth in this Chapter.

B. Every person operating a cannabis retailer shall pay to the City an annual tax in an amount equal to ten percent (10%) of the business' gross receipts.

C. This Chapter is enacted solely to raise revenue for unrestricted general revenue and municipal purposes and is intended to be a general tax and is not a special tax. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's general fund to finance the general operations of the City. Such operations may include, but are not limited to: paying for basic or enhanced law enforcement or public safety services, park, recreational, and senior services, neighborhood preservation, community services, code enforcement, infrastructure improvement and maintenance, and other such general services.

3.15.040 Tax can be spent for unrestricted general revenue purposes.

The tax revenue generated from the taxes established by this Chapter can be spent for unrestricted general revenue purposes.

3.15.050 Modifications to Tax.

A. Notwithstanding Elections Code Section 9217, or the tax rate of ten percent (10%) of gross receipts of a cannabis retailer, the City Council may, in its discretion without the vote of the people of Banning, do any of the following:

- 1) Reduce the tax rate for a cannabis retailers;
- 2) Increase any tax rates established by this Ordinance, not to exceed the maximum tax rate of 15% of gross receipts for a cannabis retailer;

3) Increase any rates if they had previously been reduced below such rate; and

4) Establish a class of persons that is exempt or excepted from the tax or discontinue any such exemption or exception.

B. In no event shall the City Council of the City of Banning increase any rates in excess of those rates specified in this Ordinance without approval by a majority of the voters voting in an election on the increase.

3.15.060 Reporting and remittance of tax.

A. The cannabis retailer tax imposed by this Chapter shall be imposed on a fiscal year basis and shall be due and payable annually.

B. Each person owing a cannabis retailer tax shall, on or before the last day of the month following the close of each fiscal quarter, prepare and submit a tax statement on the form prescribed by the Tax Administrator and remit to the Tax Administrator the tax due.

C. Tax statements and payments for all outstanding taxes owed to the City are immediately due to the Tax Administrator upon cessation of a cannabis retailer for any reason.

D. The Tax Administrator may, at his or her discretion, establish shorter reporting and payment periods for any cannabis retailer tax.

3.15.070 Payments and communications - Timely remittance.

A. Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday holiday, or a day City Hall is closed, the due date shall be the next regular business day on which City Hall is open to the public.

B. 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 received by the Tax Administrator on or before the due date.

3.15.080 Notice not required by the City.

The Tax Administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Chapter. The Tax Administrator may, as a courtesy, send a tax notice to the cannabis retailer. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

3.15.090 Non-payment of tax; Penalties and interest.

A. 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 established by resolution of the City Council. This penalty provision shall not be construed to preclude or limit the enforcement of the penal provision of this Chapter.

B. Whenever a check or electronic payment is submitted as payment for a tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any fees, penalties and interest as provided for in this Chapter, and any other amount allowed under state law.

3.15.100 Refund procedures.

A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in this Section. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a cannabis retail business.

B. Whenever the amount of any cannabis retailer tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City under this Chapter, it may be refunded to the taxpayer who paid the tax, or credited towards a future tax liability, provided that a written claim for refund is filed with the Tax Administrator within one year of the date the tax was originally due and payable.

C. The Tax Administrator shall have the right to examine and audit all the books and business records of the claimant 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 Tax Administrator to do so.

D. If the cannabis retailer tax was erroneously paid and the error is attributable to the City, the City shall refund the amount of tax erroneously paid up to one year from when the error was identified.

3.15.110 Administration of tax.

A. It shall be the duty of the Tax Administrator to collect the taxes, penalties, fees, and perform the duties required by this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Tax Administrator may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent, and express terms of this Chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Tax Administrator may take such administrative actions as needed to administer the tax, including but not limited to:

- 1) Providing to all cannabis retailers forms for the reporting of the tax;

- 2) Receiving and recording all taxes remitted to the City as provided in this Chapter;
- 3) Maintaining records of taxpayer reports and taxes collected pursuant to this Chapter;
- 4) Assessing penalties and interest to taxpayers pursuant to this Chapter;
- 5) Determining amounts owed and enforcing collection pursuant to this Chapter; and
- 6) Establishing a reasonable process, including set times and secure conditions, whereby taxpayers can pay the taxes imposed by this Chapter.

3.15.120 Enforcement - Action to collect.

Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such debt. The provisions of this Chapter shall not be deemed a limitation upon the right of the City to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax, penalties and/or fees imposed by this Chapter or the failure to comply with any of the provisions of this Chapter.

3.15.130 Audit and examination of records.

A. The Tax Administrator shall have the power to audit and examine all books, records, accounts, inventory and onsite operations of cannabis retailers, including examination of both state and federal income tax returns, sales tax returns, or other evidence documenting the gross receipts of persons engaged in cannabis businesses, and, where necessary, all equipment for the purpose of ascertaining the amount of the cannabis retailer 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 this Chapter.

B. It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this Chapter to keep and preserve, for a period of the later of four years from the due date of the return or the date the return is filed, all records as may be necessary to determine the amount of such tax as he or she may have been liable to pay to the City, which records the Tax Administrator or his/her duly authorized designee shall have the right to inspect at all reasonable times. All records for any period being audited by the City shall be retained until the audit is complete.

3.15.140 Other licenses, permits, fees.

A. This Chapter does not authorize or permit cannabis retailers to operate in the City. Cannabis retailers shall comply with the zoning requirements set forth in Chapter 17.53 of the Banning Municipal Code and must have a valid cannabis conditional use permit issued by the City Council to operate in the City. Cannabis retailers shall also comply with the regulations set forth in Chapter 5.35 of the Banning Municipal Code and must have a valid cannabis regulatory permit issued by the City Manager to operate in the City. A cannabis retailer subject to the provisions of this Ordinance shall also be subject to the business tax requirements set forth in Chapter 5.04 of the Banning Municipal Code.

B. 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 permit or license required by, under or by virtue of any other provision of this Code or any other ordinance or resolution of the City, 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 Chapter of this Code or any other ordinance or resolution of the City. Any references made or contained in any other 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 Chapters of this code.

3.15.150 Payment of tax does not authorize unlawful business.

A. The payment of a cannabis retailer tax required by this Chapter, and its acceptance by the City, shall not entitle any person to operate a cannabis retailer unless the person has complied with all of the requirements of this Code, including obtaining a cannabis regulatory permit and a cannabis conditional use permit, and all other applicable state laws.

B. No tax paid under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful cannabis retailer, or any cannabis business in violation of any local or state law.

3.15.160 Appeals procedures.

Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the City Manager by filing a notice of appeal with the City Clerk within 30 days of the serving or mailing of the determination of tax due. The City Clerk shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to the taxpayer at the last known place of address. The finding of the City Manager shall be final and conclusive and shall be served upon the taxpayer in the manner prescribed by this Chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

3.15.170 Amendments.

A. This Chapter may be amended by the City Council without a vote of the people. However, as required by Article XIII C of the California Constitution, voter

approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Chapter or extend the tax to a cannabis business that is not included in this Chapter. The people of the City of Banning affirm that the following actions shall not constitute an increase of the rate of a tax:

- 1) The restoration of the rate of the tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the tax;
- 2) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter;
- 3) The establishment of a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Chapter);
- 4) The collection of the tax imposed by this Chapter, even if the City had, for some period of time, failed to collect the tax; and
- 5) The deletion, restoration, relocation, renumbering, amendment or alteration of the provisions of this Chapter and any provision of the Code affected by this Chapter, provided that such action does not establish any new tax or increase any existing tax.

B. The City Council of the City of Banning may delete, restore, relocate, renumber, amend or alter any of the provisions of this Ordinance and any provision of the Banning Municipal Code affected by this Ordinance, provided that such action does not establish any new tax or increase any existing tax.”

SECTION 3. Intent. It is the intent of the voters that, with the exception of the ballot measure establishing a tax on commercial cultivation, manufacturing and testing laboratory facilities that was placed on the ballot by the City Council pursuant to Resolution No. 2018-82, this Ordinance conflicts with all other measures on the November 6, 2016 ballot relating to cannabis businesses including, but not limited to, a measure or measures that establish specific zones for cannabis uses, separation standards for these uses, establish an application process to obtain a permit to engage in commercial cannabis activity in the City, including criteria for approval or denial of a permit to operate a cannabis business, and the imposition of City licensing and inspection fees on cannabis businesses, and all other municipal regulations and procedures for those uses. In the event that an initiative or measure relating to cannabis businesses, other than the one placed on the ballot by the City Council pursuant to Resolution No. 2018-82, is approved by the voters, and this Ordinance receives more affirmative votes, then this Ordinance shall be deemed to conflict in its entirety with the other initiative or measure, and this Ordinance shall control in its entirety over the other initiative or measure.

SECTION 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional

by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The voters hereby declare that they would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Effective Date. This Ordinance shall be considered as adopted upon the date the vote is declared by the legislative body, and shall go into effect January 1, 2019.

SECTION 6. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published in accordance with the law.

PASSED AND ADOPTED by the People of the City of Banning, State of California, at the General Municipal Election held on November 6, 2018.

Art Welch, Mayor
City of Banning

ATTEST:

Laurie Sampson, Acting Deputy City Clerk
City of Banning

APPROVED AS TO FORM:

Kevin G. Ennis, City Attorney
Richards, Watson & Gershon, APC

CERTIFICATION:

I, Laurie Sampson, Acting Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 26th day of June, 2018, and was duly adopted at a regular meeting of said City Council on the 11th day of December, 2018, by the following vote, to wit:

AYES: Council Members Andrade, Happe, Peterson, Wallace, and Mayor Welch

NOES: None

ABSENT: None

ABSTAIN: None

Laurie Sampson, Acting Deputy City Clerk
City of Banning