

ORDINANCE NO. 2019-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ ADDING THE DEFINITIONS OF “CANNABIS CULTIVATION” AND “CANNABIS MANUFACTURING” AND REVISING THE DEFINITION OF “CANNABIS BUSINESS” AND REVISING “AMOUNT OF BUSINESS TAX OWED” IN CHAPTER 5.07 – CANNABIS BUSINESS TAX OF THE CITY OF SANTA CRUZ MUNICIPAL CODE

BE IT ORDAINED By the City of Santa Cruz as follows:

Section 1. Section 5.07.030 shall be revised as follows:

**5.07.030 DEFINITIONS.**

The definitions set forth in this section shall govern the application and interpretation of this chapter.

- (A) “Business” shall include all activities engaged in or caused to be engaged in within the city, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.
- (B) “Employee” means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner’s family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission or room and board.
- (C) “Engaged in business” means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the city or coming into the city from an outside location to engage in such activities. A person shall be deemed engaged in business within the city if:
  - (1) Such person or person’s employee maintains a fixed place of business within the city for the benefit or partial benefit of such person;
  - (2) Such person or person’s employee owns or leases real property within the city for business purposes;
  - (3) Such person or person’s employee regularly maintains a stock of tangible personal property in the city for sale in the ordinary course of business;
  - (4) Such person or person’s employee regularly conducts solicitation of business within the city;

ORDINANCE NO. 2019-10

- (5) Such person or person's employee performs work or renders services in the city on a regular and continuous basis involving more than five working days per year;
- (6) Such person or person's employee utilizes the streets within the city in connection with the operation of motor vehicles for business purposes.

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

- (D) "Evidence of doing business" means whenever any person shall, by use of signs, circulars, cards or any other advertising media, including the use of Internet or telephone solicitation, represent that such person is engaged in cannabis business in the city then these facts may be used as evidence that such person is engaged in business in the city.
- (E) "Gross receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:
  - (1) Cash discounts allowed and taken on sales;
  - (2) Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
  - (3) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
  - (4) Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
  - (5) Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;

ORDINANCE NO. 2019-10

- (6) Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
- (7) Cash value of sales, trades or transactions between departments or units of the same business;
- (8) Transactions between a partnership and its partners;
- (9) Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:
  - (a) The voting and nonvoting stock of which is owned at least eighty percent by such other corporation with which such transaction is had; or
  - (b) Which owns at least eighty percent of the voting and nonvoting stock of such other corporation; or
  - (c) At least eighty percent of the voting and nonvoting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had;
- (10) Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in subsection (E)(8);
- (11) Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;
- (12) Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the finance department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees;
- (13) Merchandise sold at retail that does not contain cannabis or cannabis derivatives.

“Gross receipts” subject to the business tax shall be that portion of gross receipts relating to business conducted within the city.

- (F) “Cannabis” means all parts of the plant *Cannabis sativa* Linneaus, *Cannabis indica*, or *Cannabis ruderalis*, as defined under the California Medical Marijuana Regulation and Safety Act at Health and Safety Code Section 19300.5(f), as may be amended.

ORDINANCE NO. 2019-10

- (G) “Cannabis business” or “medical marijuana business” means any business activity related to or concerning cannabis which entails the production, distribution, delivery, dispensing, exchanging, bartering or sale of either medical or nonmedical cannabis, including but not limited to cultivation, transporting, manufacturing, compounding, converting, processing, preparing, testing, storing, packaging, wholesale, and/or retail sales of cannabis and any ancillary products in the city, whether or not carried on for gain or profit.
- (H) “Cannabis business tax”, “business tax” or “cannabis tax” means the tax due for engaging in cannabis business in the city.
- (I) “Cannabis cultivation” means to plant, grow, harvest, dry, cure, grade, or trim cannabis.
- (J) “Cannabis distribution business” means any business that operates under only a Type 11 state license per Section 26050 of the Business and Professions Code, as may be amended.
- (K) “Cannabis manufacturing” means to compound, blend, extract, infuse, or otherwise make, process, or prepare cannabis or cannabis products.
- (L) “Combined cannabis business” means any business that operates under a Type 11 state license per Section 26050 of the Business and Professions Code, as may be amended, in addition to any other state cannabis license. This category also includes businesses that operate under a Type 12 (microbusiness) state license.
- (M) “Person” means, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.
- (N) “Operator” shall mean any person conducting, operating, or maintaining in whole or in part as principal, agent, officer, employee or independent contractor any cannabis business or medical marijuana business as defined in this chapter, taxable under this chapter.
- (O) “Sale” means and includes any sale, exchange, or barter.
- (P) “Tax administrator” or “administrator” means the finance director or such other administrator designated by the city manager to administer this chapter.
- (Q) “Testing laboratory” means any business that operates under a Type 8 state license per Section 26050 of the Business and Professions Code, as may be amended.

Section 2. Section 5.07.070 shall be revised as follows:

**5.07.070 AMOUNT OF BUSINESS TAX OWED.**

- (A) Every person engaged in cannabis business in the city shall pay a business tax at a rate of up to ten percent of gross receipts. The tax under this chapter shall not be imposed on cannabis businesses unless and until the city council, by ordinance, takes action to set a tax rate not to exceed ten percent of gross receipts.
- (B) Notwithstanding the maximum tax rate of ten percent of gross receipts imposed under subsection (A), the city council may, in its discretion, at any time by ordinance, implement a lower tax rate for all cannabis businesses or establish differing tax rates for different categories of cannabis businesses, as defined in such ordinance, subject to the maximum rate of ten percent of gross receipts. The city council may, by ordinance, also increase any such tax rate from time to time, not to exceed the maximum tax rate of ten percent of gross receipts established under subsection (A).
- (C) Pursuant to subsection (A), the cannabis business tax is set at seven percent of gross receipts. Commencing on the operative date of this chapter, every person engaged in a cannabis business in the city shall pay a cannabis business tax at the rate of seven percent of gross receipts, unless a specific exception applies.
- (D) Exception for Particular Categories: Subject to subsection (B), the cannabis business tax rates applicable to cannabis testing laboratories, cannabis distribution, cannabis cultivation, and cannabis manufacturing are as follows:
  - (1) Testing Laboratory. Commencing on January 1, 2019, every person operating a cannabis testing laboratory business in the city shall pay a cannabis business tax at the rate of one percent of gross receipts.
  - (2) Cannabis Distribution. Commencing on January 1, 2019, every person engaged in a cannabis distribution business in the city shall pay a cannabis business tax at the rate of two percent of gross receipts. Combined cannabis businesses that include distribution with other cannabis business types shall pay a cannabis business tax of two percent on those gross business receipts that are derived from the distribution of cannabis or cannabis products that are purchased from another business not owned by the same proprietor(s) and resold to a retail business or to a manufacturer in the same form as they were purchased.
  - (3) Cannabis Cultivation and Cannabis Manufacturing.
    - (i) Commencing on July 1, 2019, every person engaged in the business of cannabis cultivation or cannabis manufacturing shall pay a cannabis business tax at the rate of five percent of gross receipts through December 31, 2019.

ORDINANCE NO. 2019-10

- (ii) Commencing on January 1, 2020, every person engaged in the business of cannabis cultivation or cannabis manufacturing shall pay a cannabis business tax at the rate of six percent of gross receipts through December 31, 2021.
- (iii) Commencing on January 1, 2022, and continuing thereafter, every person engaged in the business of cannabis cultivation or cannabis manufacturing shall pay a cannabis business tax at the rate of seven percent of gross receipts.
- (E) Combined Cannabis Businesses. Combined cannabis businesses that include testing, distribution, cultivation, and/or manufacturing with other types of cannabis business shall pay the cannabis business tax rate applicable to the particular cannabis business categories which are set forth in subsections (D)(1), (2), and (3) on the gross receipts derived from those business activities. Combined cannabis businesses engaged in cannabis business activities that do not include any of the specific excluded business categories in subsection (D), shall be taxed at the standard rate of seven percent of gross receipts.

Section 3. This ordinance shall take effect and be in force thirty (30) days after final adoption.

PASSED FOR PUBLICATION this 28<sup>th</sup> day of May, 2019, by the following vote:

AYES: Councilmembers Glover, Meyers, Brown, Mathews; Vice Mayor Cummings; Mayor Watkins.

NOES: Councilmember Krohn.

ABSENT: None.

DISQUALIFIED: None.

APPROVED: \_\_\_\_\_  
Martine Watkins, Mayor

ATTEST: \_\_\_\_\_  
Bonnie Bush, City Clerk Administrator

ORDINANCE NO. 2019-10

PASSED FOR FINAL ADOPTION this 11<sup>th</sup> day of June, 2019 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: \_\_\_\_\_  
Martine Watkins, Mayor

ATTEST: \_\_\_\_\_  
Bonnie Bush, City Clerk Administrator

This is to certify that the above  
and foregoing document is the  
original of Ordinance No. 2019-10  
and that it has been published or  
posted in accordance with the  
Charter of the City of Santa Cruz.

\_\_\_\_\_  
Bonnie Bush, City Clerk Administrator