RESOLUTION NO. NS-29,128

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ CALLING AN ELECTION TO BE HELD ON NOVEMBER 8, 2016 AT THE STATEWIDE PRESIDENTIAL GENERAL ELECTION IN THE CITY OF SANTA CRUZ FOR A BALLOT MEASURE SUBMISSION OF WHETHER AN ORDINANCE REVISING THE CANNABIS BUSINESS TAX SHOULD BE ADOPTED

WHEREAS, the electors of the City of Santa Cruz adopted Measure L by 82.08% at the November 4, 2014 special election; and

WHEREAS, Measure L enacted Chapter 5.07 of the Santa Cruz Municipal Code, instituting a Cannabis Business Tax to be paid by cannabis businesses in the City of Santa Cruz; and

WHEREAS, the Cannabis Business Tax was enacted solely to raise revenue for the general governmental purposes of the City and not for purposes of regulation or of raising revenues for regulatory purposes, in that all of the proceeds from the tax imposed by the ordinance are placed in the City's general fund and are used for the usual current expenses of the City; and

WHEREAS, the Santa Cruz City Council has determined it is in the best interests of the City and its residents to submit to the voters a proposed ordinance revising the definitions of the terms "cannabis" and "cannabis business" or "medical marijuana business", and to clarify minor administrative procedures with respect to the waiver of penalties for delinquent tax payments and successor's and assignee's responsibilities in the Cannabis Business Tax ordinance to ensure that the definition of cannabis is consistent with State law, that all cannabis businesses are subject to the Cannabis Business Tax and that minor administrative corrections are made to the Chapter; and

WHEREAS, the Santa Cruz City Council desires to submit to the electors of the City of Santa Cruz at a statewide general election an ordinance amending Chapter 5.07 of the Santa Cruz Municipal Code to revise the Cannabis Business Tax ordinance as set forth above; and

WHEREAS, pursuant to Elections Code Section 10002, the governing body of any city may by resolution request the Board of Supervisors of the county to permit the county elections official to render specified services to the city relating to the conduct of an election; and

WHEREAS, the resolution of the governing body of the city shall specify the services requested; and

WHEREAS, pursuant to Elections Code Section 10002, the city shall reimburse the county in full for the services performed upon presentation of a bill to the city; and

WHEREAS, pursuant to Elections Code Section 10400, whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections; and

WHEREAS, pursuant to Elections Code Section 10400, such election for cities and special districts may be either completely or partially consolidated; and

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the Board of Supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot acknowledging that the consolidation election will be held and conducted in the manner prescribed in Section 10418. Upon such request, the Board of Supervisors may order the consolidation; and

WHEREAS, pursuant to Elections Code Section 10418, if consolidated, the consolidated election shall be held and conducted, election boards appointed, voting precincts designated, candidates nominated, ballots printed, polls opened and closed, voter challenges determined, ballots counted and returned, returns canvassed, results declared, certificates of election issued, recounts conducted, election contests presented, and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the statewide or special election, or the election held pursuant to Section 1302 or 1303, as applicable; and

WHEREAS, the resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election; and

WHEREAS, various district, county, state and other political subdivision elections may be or have been called to be held on November 8, 2016.

NOW THEREFORE, BE IT RESOLVED AND ORDERED by the City Council of the City of Santa Cruz that it hereby orders an election be called and consolidated with any and all elections also called to be held on November 8, 2016 insofar as said elections are to be held in the same territory or in a territory that is in the same part as the territory of the City of Santa Cruz, and hereby requests the Board of Supervisors of the County of Santa Cruz to order such consolidation under Elections Code Section 10401, 10403, and 10418.

BE IT FURTHER RESOLVED AND ORDERED that the City Council of the City of Santa Cruz hereby requests the Board of Supervisors to permit the Santa Cruz County Elections Department to provide any and all services necessary for conducting an election and agrees to pay for said services.

BE IT FURTHER RESOLVED AND ORDERED that the Santa Cruz County Elections Department shall conduct the election for the following measure to be voted on at the November 8, 2016 election:

Measure to be voted on:

Ballot Question:

Measure " " Amendment of the Cannabis Business Tax Ordinance
To protect the quality of life in the City of Santa Cruz and to fund essential city services such as police, fire, emergency response, youth and senior programs, job creation, housing, and environmental protection, shall Measure L be amended to clarify minor administrative procedures, revise the cannabis definition to conform to State law and revise the definition of cannabis business or medical marijuana business to include all cannabis businesses with all funds staying local?

Yes ___ No ___

The City Council of the City of Santa Cruz submits to the qualified electors said Ballot Measure Question as set forth above and designates and refers to said measure as the measure to be set forth on the ballots for use in said election. The full text of the measure is as set forth in Exhibit A.

In accordance with the provisions of Section 9280 of the California Elections Code, the City Attorney is hereby directed to prepare an impartial analysis of this measure.

In accordance with the provisions of Section 9212 of the California Elections Code, the Finance Director is hereby directed to prepare a fiscal impact statement of this measure.

BE IT FURTHER RESOLVED AND ORDERED that Santa Cruz County Elections Department is requested to:

☒ Print the attached measure text exactly as filed or indicated on the filed document in the Voter's Information Pamphlet section of the Sample Ballot for the November 8, 2016 election. Cost of printing and distribution of the measure text will be paid for by the city.

☐ Not to print the measure text in the Voter's Information Pamphlet of the Sample Ballot but send a copy to voters upon request at the cost of said city/district.

BE IT FURTHER RESOLVED AND ORDERED that the City Clerk Administrator of the City of Santa Cruz is hereby ordered and directed to cause said proposed ordinance (Exhibit A) and notice of election to be published in accordance with the provisions of the California State Election Code.

PASSED AND ADOPTED this 9th day of August, 2016, by the following vote:

AYES:	Councilmembers Noroyan, Lane, Terrazas, Posner, Comstock; Vice Mayor Chase; Mayor Mathews.
NOES:	None.
ABSENT:	None.
DISQUALIFIED:	None.

APPROVED: _____
Mayor

Attest: _____
City Clerk Administrator

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EXHIBIT A

ORDINANCE AMENDING THE CANNABIS BUSINESS TAX

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SANTA CRUZ:

Sections 5.07.030(F), 5.07.030(G), 5.07.130 and 5.07.260 of the Santa Cruz Municipal Code are hereby amended as follows:

5.07.030 DEFINITIONS

(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.

(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, cultivating, transporting, manufacturing, compounding, converting, processing, preparing, 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.

5.07.130 WAIVER OF PENALTIES

The administrator may waive the first and second penalties imposed upon any person if:

(A) The person provides evidence satisfactory to the administrator that 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 business tax and accrued interest owed the city prior to applying to the administrator for a waiver.

(B) The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax.

(C) A request for relief from the first and second penalties must be filed within thirty days of the date the remittance was due to the city, but no later than ten days of the city's notice, if sent, to the operator of the amount past due.

5.07.260 SUCCESSOR'S AND ASSIGNEE'S RESPONSIBILITY

If any operator, while liable for any amount under this chapter, sells, assigns or otherwise transfers the business, whether voluntarily or involuntarily, the operator's subsequent successor, assign or other transferee, or other person or entity obtaining ownership or control of the business, shall satisfy any tax liability owed to the city associated with the business. Failure to do so for the benefit of the city will result in being personally liable to the city for the full amount of the tax liability, which includes interest and penalties.

The successor operator, assign, purchaser, transferee, or other person or entity seeking to obtain ownership or control of the business shall notify the administrator of the date of transfer at least thirty days prior to the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business was made less than thirty days prior to the date of transfer, notice shall be provided immediately.

The successor operator, assign, purchaser, transferee, or other person or entity who obtains ownership or control of the business shall be deemed to have complied with the requirement of this section to satisfy the unpaid tax liability if that person or entity has requested and received a "tax clearance certificate" from the administrator showing that it has been paid and stating that no amount is due through the date of transfer. The issuance of such a tax clearance certificate shall be in accordance with the procedures set forth in California Revenue and Taxation Code Section 7283.5 as applicable to transient occupancy taxes.

The administrator, within ninety days of receiving a written request from a successor operator, assign, purchaser, transferee, or other person or entity who obtains or attempts to obtain ownership or control of the business, may issue a "Tax Clearance Certificate" stating either the amount of tax liability due and owing for the property, or stating that there is no tax liability due and owing for the property. The administrator may also request financial records from the current or former owner or operator to conduct an audit of the tax that may be due and owing. After completing the audit within ninety days after the date that the records were made available, the administrator may issue a tax clearance certificate within thirty days of completing the audit, stating the amount of the tax liability owed, if any. If the city determines that the records provided for an audit are insufficient, the administrator may rely on the facts and information available to estimate any tax liability associated with the property. The administrator may issue a tax clearance certificate stating the amount of the tax liability, if any, based on such facts and information available. A written application for a hearing on the amount assessed on the tax clearance certificate must be made within ten days after the serving or mailing of the certificate. The hearing provision of Section 5.07.300 shall apply. If an application for a hearing is not made within the time prescribed, the tax clearance certificate shall serve as conclusive evidence of the tax liability associated with the property as of the date specified on the certificate.