



Y

City of Santa Ana, Approve Ordinance Regarding a Marijuana/Commercial Cannabis Business License Tax

Shall Chapter 21 of the Santa Ana Municipal Code be amended to enact both a gross square footage tax of between 25 cents to \$35.00 and a gross receipts tax rate up to 10% for cultivating, manufacturing, distributing, selling or testing cannabis and related products to raise between \$8 to \$12 million to fund public safety, parks, youth and senior services, among other general City services?

What your vote means

YES	NO
A "YES" vote on the measure is a vote in favor of a gross square footage tax of between 25 cents to \$35.00 and a gross receipts tax rate up to 10% for cultivating, manufacturing, distributing, selling or testing commercial cannabis and related products.	A "NO" vote on the measure is a vote against a of a gross square footage tax of between 25 cents to \$35.00 and a gross receipts tax rate up to 10% for cultivating, manufacturing, distributing, selling or testing commercial cannabis and related products.

For and against

FOR	AGAINST
<p>Juan Villegas Council Member</p> <p>Sal Tinajero Council Member</p> <p>P. David Benavides Councilmember</p> <p>Jose Solorio City Council Member</p>	No argument against this measure was submitted.



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Full Text of Measure Y City of Santa Ana

ARTICLE XIII. COMMERCIAL CANNABIS BUSINESSES

Sec. 21-132. Purpose.

This article is required for the purpose of fixing the rate of taxation for commercial cannabis businesses including delivery, distribution, manufacturing, cultivation, testing and retail sales of cannabis and related products. This article does not apply to medical marijuana collectives/cooperatives (also referred to as medicinal cannabis retail businesses) which are subject to a business license tax under article XII of this chapter. The taxes required to be paid under this article are declared to be required pursuant to the taxing power of the City of Santa Ana solely for the purpose of obtaining revenue and are not regulatory permit fees.

Sec. 21-133. Commercial cannabis businesses—Annual business license tax assessment.

Every person engaged in a “commercial cannabis business” or “commercial cannabis activity” shall pay an annual business license tax as outlined below. This article shall not apply to medical marijuana cooperatives/collectives also referred to as medicinal cannabis retail businesses which are governed by article XII of this chapter or to personal cultivation as defined in section 18-611(n) of this code.

- (a) For each branch establishment or separate property location of a commercial cannabis business transacted and carried on in the city, and for each separate type of commercial cannabis business conducted at the same location, the higher of the two (2) following tax rates shall be due to the city for each monthly reporting period:
- (1) Up to ten percent (10%) of each dollar of gross receipts received or generated for each monthly reporting period.
 - (2) Up to \$35.00 per square foot (annual tax rate) prorated monthly to one-twelfth (1/12th) of the annual tax rate amount.
- (b) These tax rates shall not be adjusted for inflation pursuant to section 21-121 of this chapter.
- (c) Notwithstanding the tax rates imposed herein under subsection (a), the city council may, in its discretion, at any time by resolution implement any lower tax rate it deems appropriate, and may by resolution increase such tax rate from time to time, not to exceed the maximum rates established by subsection (a).
- (d) As of the operative date of this article, the business license gross receipts tax rates and square footage tax rates application to specific commercial cannabis business activities shall be established as follows:

Commercial Cannabis Business Activity	Gross Receipts Tax Rate	Gross Square Footage Tax Rate
Adult-use Cannabis Retail Business (including Delivery)	8%	\$ 25.00
Cultivation	6%	\$ 10.00
Distribution	6%	\$ 4.00
Manufacturing	6%	\$ 10.00
Testing Facility or Testing Laboratory	5%	\$ 1.50

Commercial cannabis businesses not having a fixed place of business within the city but conducting regular, non-incident commercial cannabis business activities within the city shall be subject to the gross receipts tax rate(s) as set out in the table above based on the category/categories of commercial cannabis activity conducted. However, such out-of-town commercial cannabis businesses shall not be subject to any gross square footage tax rate(s).

- (e) As part of the annual gross receipts/square footage tax(es) imposed by this article, each commercial cannabis business located within the city shall pay a minimum basic rate of two thousand dollars (\$2,000.00) annually for each branch establishment or separate property location of the commercial cannabis business transacted and carried on in the city, and for each separate type of commercial cannabis business conducted at the same location. Commercial cannabis businesses having no fixed place of business within the city shall be exempted from this requirement.
- (f) In the event the city should in the future permit additional categories of commercial cannabis business activity, as may from time to time be licensed by the State of California, such categories of commercial cannabis activities shall be subject to the same maximum tax rates as imposed herein. The city may by ordinance of the city council initially set the required gross receipts/gross square footage tax rates based on category of cannabis business activity at lesser rates as may be deemed appropriate by the city council.
- (g) For purposes of this article, a commercial cannabis business is not considered to be a business or person having a “specified exemption” or “specified exclusion” from business license taxation as set forth in sections 21-48 and 21-49 of this chapter.
- (h) For purposes of this article any person claiming an exemption from the gross receipts tax rate component of the combined gross receipts/square footage tax imposed under this article on the basis of a claim of being a qualified “nonprofit organization” shall have the burden of substantiating their claim to the same extent and in the same manner as a marijuana collective/cooperative in accordance with section 21-127(a)(6) of this chapter.
- (i) Cannabis businesses shall not pass the taxes imposed by this article through to an adult-use cannabis retail business customer or commercial cannabis business customer in any fashion except as part of the basic product sales and/or service price.
- (j) **Definitions.** For purposes of this article, the following terms have the following meanings:
- (1) “Adult-Use cannabis retail business” as defined in section 40-2(4) of this code.
 - (2) “Commercial Cannabis Activity” as defined in section 40-2(9) of this code.
 - (3) “Commercial cannabis business” as defined in section 40-2(10) of this code excluding medical marijuana collectives/cooperatives



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also referred to as medicinal cannabis retail sales.

- (4) "Cultivation" as defined in section 40-2(11) of this code.
- (5) "Delivery" as defined in section 40-2(13) of this code.
- (6) "Distribution" as defined in section 40-2(16) of this code.
- (7) "Gross receipts" – section 21-3 of this chapter notwithstanding, "gross receipts" for the purposes of this article shall mean:
 - (A) Transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration including any monetary consideration for cannabis, including, but not limited to, membership dues, reimbursements provided by members, regardless of form, or the total amount of cash or in-kind contributions, including all operating costs related to the growth, cultivation, manufacturing, distribution, testing, or provision of cannabis or any transaction related thereto.
 - (B) Anything else of value obtained by an a cannabis business;
 - (C) The total amount of the sale price of all sales and services;
 - (D) The total amount charged or received for the performance of any act, service or employment of whatever nature it may be, whether or not such service, act or employment is done as a part of or in connection with the sale of goods, wares, or merchandise (whether at wholesale or retail), for which a charge is made or credit allowed, including all refunds, cash credits and properties of any amount or nature;
 - (E) 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 materials used, the labor or service cost, interest paid or payable, losses, or any other expense whatsoever; provided that cash discounts allowed or payment on sales shall not be included;
 - (F) The amount of any federal manufacturer's or importer's excise tax included in the price of property sold, even though the manufacturer or importer is also the retailer thereof and whether or not the amount of such tax is stated as a separate charge.
 - (G) The amount of any California state cannabis excise tax or state cannabis cultivation tax regardless of whether or not the amount of such excise tax or cultivation tax is included in the price of the product or stated to customers as a separate charge.
 - (H) "Gross receipts" shall not include the following:
 - i. The amount of any federal tax imposed on or with respect to retail or wholesale sales or the sale of services whether imposed upon the cannabis business or the consumer whenever the amount of federal tax is authorized by law to be stated and passed through to customers as a separate charge.
 - ii. Any California state, county, or city sales or use tax, including any add-on, district, or transaction and use tax, required by law to be included in or added to the purchase price and collected from the consumer or purchaser, or such part of the sales price of any property previously sold and returned by the purchaser to the seller which is refunded by the seller by way of cash or credit allowances given or taken as part payment on any property so accepted for resale; or
 - iii. The amount of the sale price of business personal property (all property owned or leased by a cannabis business operator used in the operation cannabis business activities, including but not limited to: furniture, fixtures, and business equipment); real property, including land, buildings and other improvements.
 - iv. The amount of equity contributions, investments, and/or loan proceeds to cannabis business' operation, and/or proceeds from the sale or transfer of cannabis business' retail or commercial cannabis business.
 - (I) "Gross receipts" shall be calculated without any deduction on account of any of the following:
 - i. The cost of tangible or intangible property sold or bartered;
 - ii. The cost of materials or products used, labor or service cost, interest paid, losses, or other expense;
 - iii. The cost of transportation of cannabis, or other property or product;
 - iv. The amount of any federal or state income or franchise taxes; and
 - v. Any other business costs or expenses, unless otherwise specifically exempted.
- (8) "Manufacturing" as defined in section 40-2(22) of this code.
- (9) "Retail businesses" as defined in section 40-2(40) of this code.
- (10) "Gross Square foot" or "gross square footage" for the purposes of this article shall mean:
 - (A) The gross number of square feet comprising a commercial cannabis business' property location (as confirmed by the corresponding "approved building set" or "approved certificate of occupancy" on file with the City of Santa Ana Planning and Building Agency) whichever is the greater of any square footage indicated.
 - (B) In the case of commercial cannabis businesses licensed by the state to engage in cultivation "gross square foot" or "gross square footage" shall mean the aggregate sum of the number of square feet comprising all areas of the premises under "canopy", whether such sum is greater or lesser than the gross square footage as stated in the "approved building set" or "approved certificate of occupancy".
 "Canopy," shall mean the designated area(s) of a premise that will contain mature plants at any point in time. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries. Canopy may be noncontiguous, but each unique area included in the total canopy calculation shall be separated by an identifiable boundary which includes interior walls, shelves, greenhouse walls, hoop house walls, garden benches, hedgerows, fencing, garden beds, or garden plots; and if mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.
- (11) "Testing Facility" or "Testing Laboratory" as defined in section 40-2(44) of this code.
- (12) "Wholesale" as defined in section 40-2(46) of this code.

- (k) *Modification, repeal or amendment.* The city council may repeal the ordinance codified in this article, or amend it in a manner which does not result in an increase in the tax or taxes imposed herein, without further voter approval. The city council may likewise by ordinance adopt and add additional provisions to any other article of this chapter and relate them to this article, or amend any existing provisions of any article of this chapter as they may already relate to this article in any manner which does not result in an increase in the tax or taxes imposed herein,



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without further voter approval. If the city council repeals said ordinance or any provision of this article, it may subsequently reenact it without voter approval, as long as the reenacted ordinance or section does not result in an increase in the tax or taxes imposed herein.

- (l) **Administration—Rules, regulations and guidelines.** In order to aid in the city's collection of taxes due under this article and to ensure that all commercial cannabis businesses are taxed consistently to the best of the city's ability, the collector, with the concurrence of the city attorney, may promulgate rules, regulations, and guidelines, to implement and administer this article including, but not limited to rules, regulations, and guidelines harmonizing other provisions of this chapter with the provisions of this article in any manner not inconsistent with the intent of this article and which does not result in an increase in the tax or taxes imposed herein. The collector may also, with the concurrence of the city attorney, interpret or clarify 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 article.
- (m) **Occasional transactions—Exemptions.**
- (1) The provisions of this article shall not apply to persons having no fixed place of business within the city who come into the city for the purpose of transacting a specific item of commercial cannabis business at the request of a specific client or customer, incidental to a commercial cannabis business principally established elsewhere, provided that such person does not come into the city for the purpose of transacting such business on more than three (3) days during any calendar year.
 - (2) For any person not having a fixed place of business within the city who comes into the city for the purpose of transacting commercial cannabis business activities, the business license tax(es) payable by such person may be apportioned by the collector in accordance with this chapter.
- (n) **Reporting and remittance.**
1. Beginning as set forth in subsection (q) below, and monthly thereafter, each commercial cannabis business required to pay a tax or taxes based on gross receipts under this article (except qualified nonprofit organizations exempt from taxes measured by income or gross receipts), shall report to the city any gross receipts received during the preceding monthly reporting period. In addition, each cannabis business (including qualified nonprofit organizations) required to pay a tax or taxes based on square footage shall report to the city the gross square footage of the cannabis business' property location. Every cannabis business shall then compute the business license taxes at both the gross receipts rate and the gross square footage rate - prorated monthly to one-twelfth (1/12th) of the annual tax rate amount - and shall then remit to the city the amount of the higher of the two tax calculations due and owing during said period in accordance with section 21-133, subsection (d). In the case of a qualified nonprofit organization only the gross square footage computation shall be made and the amount of such calculation shall represent the amount due and owing during said period. All reporting and remitting made shall be done in accordance with instructions from the collector and shall be made using forms provided or approved by the collector.
 2. For purposes of this section, month shall mean calendar month and shall include any fraction of a month. Taxes shall begin to accrue on the date that a person or entity first receives a business license or other city permit to operate as a commercial cannabis business or upon the operative date of this article should a person or entity already possess a commercial cannabis business license or other city permit to operate as a commercial cannabis business.
 3. The payment of the two thousand dollars (\$2,000.00) minimum basic rate gross receipts tax required annually for each separate branch location or separate property location of the business in accordance with this section, shall be made annually prior to the beginning of the fiscal year beginning April first of the current year and expiring on the 31st day of March of the following year. In the case of a new commercial cannabis business the minimum basic rate gross receipts tax shall be paid in advance prior to any new business activity being undertaken. Every new licensee shall pay in advance an amount equal to one-quarter (¼) of the annual minimum basic rate gross receipts tax, for each quarter and fraction of a quarter remaining during the period for which the new license is issued.
- (o) **Delinquent date—Penalty.** Any individual or entity who fails to pay the taxes required by this article when due shall be subject to penalties and interest as set forth in accordance with this chapter. The collector is not required to send a delinquency or other notice or bill to any person subject to the provisions of this article and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this article.
- (p) **Business license tax certificate—Required.** There are imposed upon all persons engaged in transacting and carrying on any commercial cannabis business activity in the city taxes in the amounts prescribed in this article. It shall be unlawful for any person, either for him or herself or for any other person, to commence, transact or carry on any business in the city without first having procured a business license from the city under this chapter and having paid the taxes set forth in this article, and without complying with any and all applicable provisions contained in this chapter. The carrying on of any commercial cannabis business activity without complying with all the provisions of this article shall constitute a separate violation of this chapter for each and every day that such commercial cannabis activity is so carried on.
- (q) **Classification of business license assessment type—Term and renewal.** The business license issued to commercial cannabis businesses shall be classed as a gross receipts assessment type, issued for the same term of license as set forth in subsection 21-71(c) of this chapter and shall be subject to renewal in accordance with sections 21-72(c), 21-73(c), and 21-77.
- (r) **Operative date.** Upon the approval by the majority of the voters of the city at the November 6, 2018 general election, the taxes imposed by this article shall become operative and shall be applied by the collector upon all commercial cannabis businesses.

Sec. 21-134. Payment of tax does not authorize unlawful business.

- (a) The payment of a business tax required by this article, and its acceptance by the city, shall not entitle any person to carry on any commercial cannabis business unless the person has complied with all of the requirements of this code and all other applicable laws, nor to carry on any commercial cannabis business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such commercial cannabis business is in violation of any law.
- (b) No tax paid under the provisions of this article shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any legal business in an illegal manner, or any business in violation of any ordinance of the city, state or federal law.

Sec. 21-135. Single property location; multiple state licenses; separate city business licenses.

Sections 21-7, 21-8, and 21-9 of this chapter notwithstanding, separate city business licenses, issuable to commercial cannabis businesses pursuant to this article, shall be required for each separate type of commercial cannabis business activity transacted and carried on at a single city



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property location for which a commercial cannabis business may seek licensure by the state, or for which a state license has been approved or issued.

Sec. 21-136. Security for collection of commercial cannabis business' business license tax.

To ensure compliance with business license tax payment requirements established pursuant to this article, the collector shall require, beginning on the operative date of this article, that each commercial cannabis business owner (including but not limited to each transferee, assignee, or purchaser of a commercial cannabis business subject to the business licensing requirements of this article) deposit within thirty (30) days such security (per individual business license) in a form acceptable to the collector in an amount not larger than the cannabis business owner's estimated average monthly tax liability as determined by the collector or the sum of ten thousand dollars (\$10,000.00), whichever is the greater. Each new city commercial cannabis business licensee shall upon obtaining their city business license(s) deposit a similar security per business license within thirty (30) days after commencing business.

Sec. 21-137. Effect of state and federal reference/authorization.

Unless specifically provided otherwise, any reference to a state or federal statute in this article or chapter (whether by direct citation or by definitional reference to another chapter of this code) shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease. Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the city's authorization to collect or impose any tax imposed under this article is expanded or limited as a result of changes in state or federal law, no amendment or modification of this article shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this article.

Sec. 21-138. Violation deemed misdemeanor—Penalty.

Any person violating any of the provisions of this article or any regulation or rule passed in accordance herewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by the maximum penalties provided for in California Penal Code Section 19. The penalties under this section are in addition to any other penalties available pursuant to this code.

Sec. 21-139. Transferability of commercial cannabis business license.

Section 21-67 of this chapter notwithstanding, business licenses issued to commercial cannabis businesses pursuant to this article shall be transferable or assignable upon presentation of a valid regulatory safety permit issued in the name of the transferee or assignee.

Sec. 21-140. Severability.

Should any provision of this article, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this article or chapter or the application of this article or chapter to any other person or circumstance and, to that end, the provisions hereof are severable.



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Impartial Analysis City of Santa Ana Measure Y

Measure Y adds Article XIII to Chapter 21 of the Santa Ana Municipal Code by way of an ordinance. This ordinance sets forth a business license tax resulting from a gross square footage tax of between 25 cents to \$35.00 and a gross receipts tax rate of up to 10% for cultivating, manufacturing, distributing, selling or testing of commercial cannabis and related products. This measure does not include medicinal cannabis also known as medical marijuana, which has a separate business license tax.

Measure Y was put on the ballot by the Santa Ana City Council and is expected to generate \$11 to \$14 million dollars a year to fund general city services.

Measure Y sets the initial gross receipts tax rates at between 5% and 8% and the gross square footage tax rates between \$1.50 to \$25.00 depending on the type of commercial cannabis business. These rates can be adjusted up or down by the City Council without the need for further voter approval but cannot exceed \$35 for the gross square footage tax or 10% for the gross receipts tax rate without further voter approval.

Measure Y requires approval of a majority of the Santa Ana voters that vote in the election on November 6, 2018 to become law. If approved, the tax will be imposed beginning on December 6, 2018 and will continue until ended by the voters or repealed by the City Council.

Measure Y provides that any additional types of commercial cannabis businesses licensed by the City in the future would be subject to the maximum tax rates imposed in Measure Y. It also provides that the City Council may repeal or amend the ordinance set forth in Measure Y in any way that does not result in an increase in the taxes imposed without further voter approval.

In summary:

A "YES" vote on the measure is a vote in favor of a gross square footage tax of between 25 cents to \$35.00 and a gross receipts tax rate up to 10% for cultivating, manufacturing, distributing, selling or testing commercial cannabis and related products.

A "NO" vote on the measure is a vote against a of a gross square footage tax of between 25 cents to \$35.00 and a gross receipts tax rate up to 10% for cultivating, manufacturing, distributing, selling or testing commercial cannabis and related products.

The above statement is an impartial analysis of Measure Y. If you desire a copy of the measure, please call the City Clerk at (714) 647-6250 and a copy will be mailed at no cost to you.

s/ Sonia Rubio Carvalho
Santa Ana City Attorney



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Argument in Favor of Measure Y

Cannabis Tax

Since California voters already have legalized marijuana sales, cities like Santa Ana must protect the public by properly regulating and taxing commercial and adult-use marijuana businesses.

Here is why you should vote YES on Measure Y:

A YES vote on Measure Y will ensure our city government has the financial resources to properly regulate marijuana businesses without hurting the city's investment in core city services. In fact, revenue from Measure Y will provide much needed funds for youth services and neighborhood safety initiatives.

Measure Y is solely to be paid by marijuana businesses and no one else.

Measure Y guarantees that marijuana businesses will pay their fair share.

Dozens of California cities have already implemented a similar tax and we should do so now to regulate this industry.

A YES vote on Measure Y will protect the city budget from any additional cost that legalized marijuana could impose on our city.

s/ Juan Villegas
Council Member

s/ Sal Tinajero
Council Member

s/ P. David Benavides
Councilmember

s/ Jose Solorio
City Council Member

No argument against this measure was submitted.