# AGENDA STAFF REPORT

**DATE:** August 8, 2018

**TO:** Mayor and City Council

**APPROVED BY:** David Dale, City Manager DD

**PREPARED BY:** Carlos Campos, City Attorney
Miguel Figueroa, Assistant City Manager

**SUBJECT:** Local Initiative Measure – Establishing a Tax on Cannabis Businesses Operating within the City of Calexico

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## RECOMMENDATION:

It is recommended that the City Council consider adopting the following Resolutions:

- Resolution No. 2018 - 45 calling for the placement of a cannabis business tax initiative measure on the November 6, 2018 ballot;

- Resolution No. 2018 - 46 requesting the County of Imperial to consolidate this election with the Statewide General Election also to be held on November 6, 2018; and

- Resolution No. 2018 - 47 setting deadlines and rules for the submission of primary and rebuttal arguments for and against the proposed initiative measure.

Please note that these resolutions must be approved by a two-thirds (2/3) vote of the membership of the City Council (4 affirmative votes).

## BACKGROUND AND DISCUSSION:

Current State law allows qualified patients and their caregivers to cultivate and possess cannabis for personal use in order to treat certain medical conditions. It also allows the personal possession and use of recreational cannabis. However, cities retain their authority to reasonably regulate the business of cultivating, processing and selling cannabis and related products.

AGENDA ITEM 1

On July 5, 2017, the Calexico City Council adopted Ordinance Nos. 1177 and 1178, which allow, but strictly limits, cannabis businesses. These

Ordinances contain detailed regulations for the location and operation of commercial cannabis operators, including for cultivation, processing, testing, and transportation. While Ordinance Nos. 1177 and 1178 created a comprehensive regulatory scheme for cannabis businesses, it did not establish local taxes on such businesses. This is because State law requires any new, increased or extended local taxes to be approved by the voters (Proposition 218).

The City's General Fund pays for general City programs such as police, fire and paramedic response, parks, libraries and youth/senior programs. Staff believes that a cannabis business tax can provide an important new revenue source to maintain general City services.

**ISSUES/ANALYSIS**

The attached Resolutions propose placing a measure on the ballot that would establish a general tax on cannabis businesses operating in the City of Calexico. The measure is intended to tax broadly and taxes both medical and recreational cannabis businesses. Staff emphasizes that this measure would not expand or alter the City's current regulatory program which presently only allows limited cannabis businesses. This is solely a taxing measure.

The proposed measure would:

- Establish a tax on all cannabis businesses within the City of Calexico of up fifteen (15%) of gross receipts from the sale of cannabis and related products.

- Establish an additional tax on cannabis businesses within the City of Calexico of up to $25 per square foot of space utilized for cannabis businesses.

The above rates are maximum rates. The measure would permit the City Council to adjust tax rates up or down, by ordinance, provided no rate exceeds the maximum without future voter approval.

The measure proposes general taxes which would be deposited in the City's General Fund and may be spent for any general City program. The taxes are intended to be collected quarterly. The measure contains detailed rules with respect to collection, administration, enforcement and refund procedures for the taxes. The measure also expressly provides that it will apply to any cannabis business that is now permitted in the City, or what may be allowed in the future.

Pursuant to Proposition 218 (California Constitution, Article XIIIC), all general taxes which are imposed, extended or increased must be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election. As such, the Council is not being asked to adopt the proposed measure. Instead, staff requests that the Council

consider adopting the three resolutions attached to this report in order to place the measure on the November 6, 2018 ballot so that Calexico voters can decide.

Resolution 2018 -45 is the principal resolution which calls the election and places the measure on the November 6, 2018 ballot. Under California Proposition 218, the upcoming November 6, 2018 Municipal General Election is an appropriate date to place a local tax measure on the ballot.

Resolutions 2018 - 46 and 2018 -47 are largely boilerplate resolutions to help set up the election on the measure. One resolution consolidates the measure with the November Statewide General Election, effectively allowing the Imperial County Registrar of Voters to conduct the election on the City's behalf. The other resolution sets deadlines and rules for how and when interested persons may submit arguments for or against the proposed measure. Pursuant to Proposition 62, a two-thirds vote of the membership of the City Council is required to adopt these resolutions (4 affirmative votes).

## FISCAL IMPACT

If approved, the cannabis business tax is anticipated to generate approximately $700,000 in additional annual General Fund revenues.

## ENVIRONMENTAL IMPACTS

None.

## ALTERNATIVES

1. Provide alternative direction to staff.

## ATTACHMENTS

1. Resolution No. 2018 - 45 calling for the placement of the cannabis business tax initiative measure on the November 6, 2018 ballot (with Measure/Ordinance No. _____ attached).

2. Resolution No. 2018 - 46 requesting the County of Imperial to consolidate this election with the Statewide General Election also to be held on November 6, 2018.

3. Resolution No. 2018 - 47 setting deadlines and rules for the submission of primary and rebuttal arguments for and against the proposed initiative measure.

# RESOLUTION NO. 2018-45

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, CALLING FOR THE PLACEMENT OF A GENERAL TAX MEASURE ON THE BALLOT AT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF A PROPOSED ORDINANCE ESTABLISHING A TAX ON CANNABIS BUSINESSES OPERATING WITHIN THE CITY OF CALEXICO.**

**WHEREAS**, pursuant to California Elections Code Section 9222, the City Council has authority to place measures on the ballot to be considered at a Municipal Election; and

**WHEREAS**, the City Council desires to submit to the voters an amendment to the Calexico Municipal Code to establish a general business tax on cannabis business operating in the City; and

**WHEREAS**, the proposed cannabis business tax will be a general tax the proceeds of which are deposited into the City's general fund. The general fund pays for City services such as police protection, fire and paramedic services, street operations and maintenance, library services, parks and recreation services and general municipal services to the public; and

**WHEREAS,** on November 6, 1996, the voters of the State of California approved Proposition 218 (California Constitution, Article XIIIC), an amendment to the State Constitution which requires that all general taxes which are imposed, extended or increased must be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election; and

**WHEREAS,** pursuant to Proposition 218 (California Constitution Article XIIIC, §2(b)), an election for the approval of a new or increased general tax must generally be consolidated with a regularly scheduled general election for members of the governing body of the local government; and

**WHEREAS,** the City's regular municipal elections for officers are held on the first Tuesday after the first Monday in November of each even-numbered year. Therefore, the next regularly scheduled General Municipal Election for the election of members of the City Council will be held on Tuesday, November 6, 2018; and

**WHEREAS,** pursuant to California Government Code §53724 ("Proposition 62"), a two-thirds (2/3) vote of the membership of the City Council is required to place the Measure on the November 6, 2018 ballot.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

SECTION 1. Findings. The City Council finds that all of the preceding recitals are true and correct and are hereby incorporated and adopted as findings and determinations by the City Council as if fully set forth herein.

SECTION 2. Submission of Measure. Pursuant to California Constitution, Article XIIIC, Section 2(b), California Government Code Section 53724 and any other applicable requirements of the laws of the State of California relating to general law cities, the City Council, **by a 2/3 supermajority vote,** hereby orders the following proposed Measure/ordinance to be submitted to the voters of the City at the General Municipal Election to be held on Tuesday, November 6, 2018.

SECTION 3. Ballot Measure Language. The ballot measure shall be presented and printed upon the ballot submitted to the voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the City General Municipal Election to be held on Tuesday, November 6, 2018, in addition to any other matters required by law, there shall be printed substantially the following:

| | |
|---|---|
| "Shall the City of Calexico adopt an ordinance enacting a tax on cannabis businesses of up to $25 per square foot of space utilized, and up to 15% of gross receipts from the sale of cannabis and related products, generating approximately $700,000 annually for general City services, such as police and emergency response, parks, youth/senior services, and street repair, until ended by voters?" | YES<br><br>NO |

SECTION 4. Conduct of Election. The City Clerk is authorized, instructed, and directed to procure and furnish any and all official ballots, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 5. Notice of Election. Notice of the time and place of holding the election is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 6. Impartial Analysis. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the Measure as set forth herein to the City Attorney. The City Attorney shall prepare an impartial analysis of the Measure, not to exceed 500 words in length, showing the effect of the Measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk not later than end of business on **August 17, 2018**. The impartial analysis shall include a statement indicating whether the Measure was placed on the ballot by a petition signed by the requisite number of voters or by the City Council. In the event the entire text of the Measure is not printed on the ballot, or in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **"The above statement is an impartial analysis of Ordinance or Measure "___". If you desire a copy of the ordinance or measure, please call the election official's office at (760) 768-2102 and a copy will be mailed at no cost to you."**

SECTION 7. Certification. The City Clerk shall certify to the adoption of this Resolution.

SECTION 8. Filing with County. The City Clerk shall, not later than the 88th day prior to the General Municipal Election to be held on Tuesday, November 6, 2018, file with the Board of Supervisors and the County Clerk – Registrar of Voters of the County of Imperial, State of California, a certified copy of this Resolution.

SECTION 9. Public Examination. Pursuant to California Elections Code Section 9295, this measure will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the voter information guide. The Clerk shall post notice in the Clerk's office of the specific dates that the examination period will run.

[signatures on next page]

**PASSED, APPROVED** and **ADOPTED** this 8th day of August, 2018.

_____
Lewis Pacheco, Mayor

ATTEST:

_____
Gabriela T. Garcia, Deputy City Clerk

APPROVED AS TO FORM:

_____
Carlos Campos, City Attorney
Best Best & Krieger

STATE OF CALIFORNIA )
COUNTY OF IMPERIAL ) ss.
CITY OF CALEXICO )

**I HEREBY CERTIFY** that the foregoing Resolution No. 2018-45 was duly adopted by the City Council of the City of Calexico at a special meeting thereof, held on the 8th day of August, 2018, by the following vote of Council:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
Gabriela T. Garcia, City Clerk

Exhibit "A"

ORDINANCE NO. 2018-_____

MEASURE "____"

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF CALEXICO, CALIFORNIA, ADDING CHAPTER 3.40 TO TITLE 3 (REVENUE AND FINANCE) OF THE CALEXICO MUNICIPAL CODE ESTABLISHING A TAX ON CANNABIS BUSINESSES OPERATING WITHIN THE CITY OF CALEXICO.**

**THE PEOPLE OF THE CITY OF CALEXICO, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. **Addition to Calexico Municipal Code.** Chapter 3.40 is hereby added to Title 3 (Revenue and Finance) of the Calexico Municipal Code and shall read as follows:

**"Chapter 3.40 - CANNABIS BUSINESS TAX.**

**3.40.010 – Definitions.**

For purposes of this Chapter:

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.

B. "Cannabis business" means any business, organization or facility, regardless of form, whether operating for profit or not for profit, that cultivates, processes, stores, tests, packages, labels, distributes, transports, and/or sells, dispenses or delivers cannabis, cannabis products and/or devices for the use of cannabis or cannabis products. "Cannabis business" does not include personal medical or adult use cannabis cultivation authorized by State law and this Code. A cannabis business shall not be considered to be a religious, social or charitable organization exempt from the payment of business taxes under this Chapter.

C. "Cannabis cultivation" means the seeding, planting, watering, warming, cooling, growing, harvesting, drying, curing, grading or trimming of cannabis.

D. "Cannabis distribution" or "Cannabis transport" means any activity involving the commercial procurement, sale, transfer and/or transport of cannabis and

cannabis products from one cannabis business to another cannabis business for purposes authorized pursuant to state law.

E. "Cannabis nursery" means a cannabis business that produces only clones, immature plants, seeds and other agricultural products used specifically for cannabis cultivation.

F. "Cannabis processing" shall mean any activity involving the holding, storing, sorting, preparation, labeling and packaging of raw cannabis for retail sale; or involving the production, preparation, propagation, labeling, packaging or compounding of cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis.

G. "Cannabis product" means cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. "Cannabis product" also means cannabis products as defined by California Health and Safety Code Section 11018.1 and is not limited to medical cannabis products.

H. "Cannabis testing" means any activity involving the testing of cannabis or cannabis products by a facility that is both of the following:

1. Accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state; and

2. Registered with the California State Department of Public Health.

I. "Engaged in a cannabis business" means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate, franchise or other business powers, whether done as owner, or by means of an officer, agent, manager, employee, or other representative, within the City, whether operating from a fixed location within the City or coming into the City from an outside location to engage in cannabis business activities. By way of example, a person shall be deemed "engaged in cannabis business" within the City if such person or the person's officer, agent, manager, employee, or other representative acting on behalf of such person:

1. maintains a fixed place of cannabis business within the City;

2. owns, leases or otherwise has the legal right to occupy real property within the City for cannabis business purposes;

3. regularly maintains a stock of tangible personal property within the City in the ordinary course of cannabis business;

4. performs work or renders cannabis business services to other cannabis businesses or to retail cannabis customers located within the City.

J. "Gross receipts" means, except as otherwise provided in this Chapter, the total amount of monetary consideration actually received or receivable by a cannabis business for performance of any act or service in providing, at wholesale or retail, cannabis and/or cannabis products, for which a charge is made or credit allowed including, but not limited to: membership dues, the value of monetary and in-kind contributions, payments, reimbursement of fees for cultivation, processing, distribution, delivery, retail, storing, exchanging, processing, delivering, making available, or transmitting of cannabis or cannabis products, any payments made, and anything else of value obtained by a cannabis business. Included in "gross receipts" shall be all receipts, cash, credits, and property of any kind without deduction 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. Gross receipts shall not include the following:

1. Cash discounts where allowed and taken on sales;

2. Sales or other applicable state or local tax required by law to be added to the purchase price of cannabis or cannabis products and collected from the purchaser;

3. Such part of the sales 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; or

4. Whenever there are included within gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectable in a subsequent year, those amounts may be excluded from gross receipts in the year they prove to be uncollectable, provided, however, if all or any portion of such amounts excluded as uncollectible are subsequently collected they shall be included in gross receipt for the period when they are recovered.

K. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit, which is conducting itself as a cannabis business.

L. "Space utilized in connection with a cannabis business" means any space or ground, floor or other surface area (whether horizontal or vertical) which is used for either or both of the following:

1. Cannabis nursery and/or cultivation, of any combination of those activities, as well as storing any products, supplies or equipment related to any such activities, no matter where such storage may take place or such storage space may be located.

2. Cannabis processing, testing, distribution, transport, retail sale or any combination of those activities, as well as storing any products, supplies or

equipment related to any such activities, no matter where such storage may take place or such storage space may be located.

M. "State" means the State of California.

N. "Tax Administrator" is the City's Director of Finance, or his or her designee.

**3.40.020 – Purpose of Tax.**

This tax is a general tax, the revenues from which may be used for general City services.

**3.40.030 – Imposition of Tax.**

A. Every person engaged in a cannabis business within the City of Calexico, and regardless of whether such business has a permit to operate pursuant to the Calexico Municipal Code, shall pay a cannabis business tax at the following rates:

1. Up to a maximum of fifteen percent (15%) of gross receipts or fractional part thereof, generated by a cannabis business at wholesale or retail, subject to adjustment by the City Council pursuant to Section 3.40.050; and

2. Up to a maximum of twenty dollars ($25.00) per square foot of space utilized in connection with a cannabis business, subject to adjustment by the City Council pursuant to Section 3.40.050.

B. No cannabis business shall be deemed to be exempt from the payment of the taxes identified above by any other provision of this Code, unless expressly exempted under this Chapter.

**3.40.040 – Payment Obligation.**

All taxpayers subject to this Chapter must pay the full tax imposed by this Chapter regardless of any rebate, exemption, incentive, or other reduction set forth elsewhere in this Code, except as required by California or Federal law. Failure to pay the tax shall be subject to penalties, interest charges, and assessments as the City Council may establish and the City may use any or all other code enforcement remedies provided in this Code. No provision in this Code can lower the tax rate set forth in this Chapter or otherwise reduce the amount of taxes paid hereunder unless the provision specifically states that the reduction applies.

**3.40.050 – City Council Authorization to Adjust Tax Rate and/or Methodology.**

This Chapter authorizes the maximum business tax rate as identified in Section 3.40.030 above. The City Council may, by ordinance, upwardly or downwardly adjust the rate of the tax imposed by this Chapter and may otherwise repeal or amend this Chapter without

a vote of the People. However, as required by California Constitution Article XIIIC (Proposition 218), voter approval is required for any amendment that would increase the maximum rate or methodology of any tax levied pursuant to this Chapter. The People of the City of Calexico affirm that the following actions shall not constitute an increase of the maximum rate or methodology of the tax requiring subsequent voter approval:

A. The upward adjustment of the tax rate applicable to any or all classes of cannabis business, provided the rate does not exceed the maximum set forth by this voter-approved Chapter;

B. The restoration of the tax to a rate that is no higher than the maximum set by this voter-approved Chapter, if the City Council has previously acted to reduce the rate of the tax;

C. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter;

D. The establishment of a class of person or service that is exempt or excepted from the tax or the discontinuation of any such exemption or exception; and

E. Resuming collection of the tax imposed by this Chapter, even if the City had, for some period of time, either suspended collection of the tax or otherwise failed to collect the tax, in whole or in part.

**3.40.060 – Payment of Tax Does Not Authorize Illegal Activity.**

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 implies or authorizes that any activity connected with the distribution or possession of cannabis is legal unless otherwise authorized and allowed in strict and full conformance to the provisions of State law and this Code.

**3.40.070 – Cannabis Business Tax Is Not a Sales Tax.**

The tax provided for under the provisions of this Chapter is not a Sales, Transactions or Use Tax and shall not be calculated or assessed as such. The tax established under this Chapter shall not be separately identified or otherwise specifically assessed or charged to any customer or client of a cannabis business.

**3.40.080 – Amendments and Administration.**

A. This Chapter was submitted to the voters for approval. Any amendment to this Chapter to increase the tax above the maximum rate expressly provided in Section 3.40.030 shall not become effective until such amendment is approved by the voters. The

voters expressly authorize the City Council to amend, modify, change, or revise any other provision of this Chapter as the City Council deems in the best interest of the City, as set forth in Section 3.40.050.

B. The Tax Administrator 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.

C. The Tax Administrator shall annually audit the taxes imposed by this Chapter to verify that tax revenues have been properly expended in accordance with the law.

D. Pursuant to California Constitution Article XIIIB, the appropriation limit for the City is increased to the maximum extent over the maximum period of time allowed under law consistent with the revenues generated by the tax established by this Chapter.

**3.40.090 – Returns and Remittances.**

The Tax shall be due and payable as follows:

A. The tax established by this Chapter shall be collected quarterly. Each person owing tax shall prepare and file a tax return to the Tax Administrator setting out the total amount of tax owed for the preceding calendar quarter during which the tax was in effect. The return shall be filed not later than thirty (30) calendar days following the last day of the preceding each calendar quarter. At the time the tax return is filed, the full amount of the tax owed for the preceding calendar quarter shall be remitted to the Tax Administrator.

B. All tax returns shall be completed on forms provided by the Tax Administrator.

C. Tax returns and payments for all outstanding taxes owed the City are immediately due to the Tax Administrator upon cessation of business for any reason.

D. Whenever any payment, statement, report, request or other communication received by the Tax Administrator 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 Tax Administrator 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 Tax Administrator may regard such payment, statement, report, request, or other communication as having been timely received. If the due date falls on Friday, Saturday, Sunday, or a holiday, the due date shall be the next regular business day on which the City Hall is open to the public.

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 in Subsection (A) of this Section.

F. 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 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.

**3.40.100 – Failure to Pay Tax.**

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 as follows:

1. A penalty equal to twenty-five percent (25%) of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate established by resolution of the City Council; and

2. An additional penalty equal to twenty-five percent (25%) of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and interest on the unpaid penalties calculated at the rate established 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 tax amount due plus penalties and interest as provided for in this Section plus any amount allowed under State law.

C. The tax due shall be that amount due and payable from January 1, 2019 or the first date on which the cannabis business first engaged in business in the City, whichever date occurred last, together with applicable penalties and interest calculated in accordance with Subsection (A) of this Section.

D. The Tax Administrator may waive the first and second penalties of twenty-five percent (25%) each imposed upon any person if:

1. The person provides evidence satisfactory to the Tax 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 tax and accrued interest owed the City prior to applying to the Tax Administrator for a waiver.

2. The waiver provisions specified in this Subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four (24) month period.

**3.40.110 – Refunds.**

A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in this Section.

B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a cannabis business.

C. 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 tax provided that a written claim for refund is timely filed with the City, pursuant to this Code. The period for filing a claim for refund shall be one (1) year from the time the tax was paid or erroneously or illegally collected; provided however, that in no event shall the period to file such claim expire prior to the shortest period allowable for filing a tax refund claim under Government Code Section 911.2. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto, and must clearly set forth the facts and legal theories under which the claimant believes he or she has right to a refund. Where the amount of any individual refund claim is in excess of the amount set by ordinance or resolution of the City Council relating to the settlement of general liability claims against the City by the City Manager, City Council approval shall be required.

D. The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon.

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

F. Any person entitled to a refund of taxes paid pursuant to this Chapter may elect in writing to have such refund applied as a credit against a cannabis business's taxes for the next calendar quarter.

G. In the event that the tax was erroneously paid and the error is attributable to the City, the amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain the amount set forth in this Chapter from the amount to be refunded to cover expenses.

H. The Tax Administrator shall initiate a refund of any tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a City audit of tax revenues.

**3.40.120 – Enforcement.**

A. It shall be the duty of the Tax Administrator to enforce each and all of the provisions of this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Tax Administrator, with the concurrence of the City Attorney, may from time to time promulgate administrative rules and regulations.

C. The Tax Administrator shall have the power to audit and examine all books and records of cannabis businesses as well as persons engaged in the operation of cannabis businesses, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of or the transaction prices charged by a cannabis business or persons engaged in the operation of a cannabis business, 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 item thereof when filed by any person pursuant to the provisions of this Chapter. If such cannabis business or person, after written demand by the Tax Administrator, refuses to make available for audit, examination or verification such books, records, or equipment as the Tax Administrator requests, the Tax Administrator may, after full consideration of all information within the Tax Administrator's knowledge concerning the cannabis business and its business and activities of the person so refusing, make an assessment in the manner provided in Section 3.40.130.

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 the a cannabis business certificate or permit from the City shall be deemed guilty of a misdemeanor.

**3.40.130 – Debts, Deficiencies and Assessments.**

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 operating a cannabis business without having paid any applicable tax, penalties, and interest 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 cannabis business.

B. If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this Chapter is correct, or that the amount of tax is correctly computed, the Tax Administrator 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 a cannabis business, a deficiency determination may be made at any time within three (3) 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. Whenever a deficiency determination is made, notice shall be given to the person concerned in the same manner as notices of assessment are given under Subsections (C), (D), and (E) of this Section.

C. Under any of the following circumstances, the Tax Administrator may make and give notice of an assessment 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 Tax Administrator, filed a corrected statement or return, or furnished to the Tax Administrator 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 Tax Administrator determines that the nonpayment of any tax due under this Chapter is due to fraud, a penalty of twenty-five percent (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 assessment shall separately set forth the amount of any tax known by the Tax Administrator to be due or estimated by the Tax Administrator, after consideration of all information within the Tax Administrator's knowledge concerning the business and activities of the person assessed, to be due 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 assessment.

D. The notice of assessment shall be served upon the person either by handing it to him or her 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 cannabis business appearing on the face of the business license issued under this Code, or to such other address as he or she shall register with the Tax Administrator for the purpose of receiving notices provided under this Chapter; or, should the person have no business license issued and should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

E. Within ten (10) calendar days after the date of service the person may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Tax Administrator shall become final and conclusive.

F. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be held within thirty (30) calendar days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

G. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to the person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.40.140 of this Chapter.

H. Unless appealed, payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) calendar day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be at the rates set forth herein, along with interest at the rate as set forth by resolution of the City Council, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Section shall commence from the date of delinquency as provided in this subsection.

**3.40.140 - Appeals.**

A. The provisions of this section apply to any deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by

any decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [See Government Code Section 935(b).]

B. If any person is aggrieved by any deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within ten (10) calendar days of the date of the deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the person.

C. If the person requests an appeal, the City Clerk shall cause the matter to be set for hearing, which shall be held within thirty (30) calendar days after receipt of the written request for appeal. Notice of the time and place of the appeal hearing shall be mailed by the City Clerk to such person at least ten (10) calendar days prior to the hearing, and, if the City Manager desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

D. At the time fixed for the hearing, the City Manager shall hear all relevant testimony and evidence, *de novo*, including that of any other interested parties. At the discretion of the City Manager, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the City Manager shall issue a final decision confirming, modifying or rejecting the Tax Administrator's deficiency determination, and shall mail a copy of such final decision to the person owing the tax. The City Manager's decision shall be final and subject only to judicial review shall be pursuant to California Code of Civil Procedure Section 1094.6. Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) calendar day following the date of receipt of the City Manager's decision.

**3.40.150 – No Injunction/Writ of Mandate.**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

**3.40.160 – Future Amendment to Cited Statute.**

Unless specifically provided otherwise, any reference to a state or federal statute in this Chapter 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, 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 would not 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 Chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this Chapter 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 Chapter."

SECTION 2. **Effective Date.** Pursuant to California Constitution Article XIIIC §(2)(b) and California Elections Code §9217, this Measure must be approved by at least a majority of the eligible voters of the City of Calexico voting at the General Municipal Election of November 6, 2018.

SECTION 3. **Severability.** If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The People of the City of Calexico hereby declare that they would have adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 4. **Certification/Summary.** Following the City Clerk's certification that the citizens of Calexico have approved this Ordinance, the Mayor shall sign this Ordinance and the City Clerk shall cause the same to be entered in the book of original ordinances of said City; and shall cause the same, or a summary thereof, to be published as required by law.

[Signature provisions on following page]

**PASSED, APPROVED** and **ADOPTED** this ____ day of _____, 2018.

_____
Lewis Pacheco, Mayor

ATTEST:

_____
Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

_____
Carlos Campos, City Attorney
Best Best & Krieger

# RESOLUTION NO. 2018-46

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF IMPERIAL TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 6, 2018 WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THAT DATE PURSUANT TO SECTION 10403 OF THE CALIFORNIA ELECTIONS CODE.**

**WHEREAS,** the City Council of the City of Calexico called a General Municipal Election to be held on November 6, 2018; for the purpose of submitting to the voters the question relating to a Cannabis Business Tax; and

**WHEREAS,** it is desirable that the General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the City; the precincts, polling places and election officers of the two elections be the same, and that the election department of the County of Imperial canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**Section 1. Request for Consolidation.** Pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of Imperial is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on November 6, 2018, for the purpose of submitting to the voters the question relating to a Cannabis Business Tax.

**Section 2. Measure Language.** A measure is to appear on the ballot as follows:

| | |
|---|---|
| "Shall the City of Calexico adopt an ordinance enacting a tax on cannabis businesses of up to $25 per square foot of space utilized, and up to 15% of gross receipts from the sale of cannabis and related products, generating approximately $700,000 annually for general City services, such as police and emergency response, parks and youth/senior services, and street repair, until ended by voters?" | Yes |
| | No |

**Section 3. Canvass of Returns.** The County election department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used. Pursuant to California Elections Code Sections 10403 and 10418, the election will be held and conducted in accordance with the provisions of law regulating the Statewide General Election.

**Section 4. Necessary Steps.** The Board of Supervisors is requested to issue instructions to the County election department to take any and all steps necessary for the holding of the consolidated election.

**Section 5. Costs.** The City of Calexico recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

**Section 6. Filing of Resolution.** The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the election department of the County of Imperial.

**Section 7. Certification.** The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

**PASSED, APPROVED AND ADOPTED** this 8th day of August, 2018.

_____
Lewis Pacheco, Mayor

ATTEST:

_____
Gabriela T. Garcia, Deputy City Clerk

APPROVED AS TO FORM:

_____
Carlos Campos, City Attorney
Best Best & Krieger

# RESOLUTION NO. 2018-47

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, PROVIDING FOR THE FILING OF PRIMARY AND REBUTTAL ARGUMENTS AND SETTING RULES FOR THE FILING OF WRITTEN ARGUMENTS REGARDING A CITY MEASURE TO BE SUBMITTED AT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION**

**WHEREAS,** a General Municipal Election is to be held in the City of Calexico, California on November 6, 2018, at which there will be submitted to the voters the following measure:

| | |
|---|---|
| "Shall the City of Calexico adopt an ordinance enacting a tax on cannabis businesses of up to $25 per square foot of space utilized, and up to 15% of gross receipts from the sale of cannabis and related products, generating approximately $700,000 annually for general City services, such as police and emergency response, parks and youth/senior services, and street repair, until ended by voters?" | Yes |
| | No |

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**Section 1. Primary Arguments.** That the City Council authorizes (i) the City Council or any member(s) of the City Council, (ii) any individual voter eligible to vote on the above measure, (iii) a bona fide association of such citizens or (iv) any combination of voters and associations, to file a written argument in favor of or against the City measure, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California, and to change the argument until and including the date fixed below by the City Clerk, after which no arguments for or against the City measure may be submitted to the City Clerk.

The deadline to submit arguments for or against the City Measure pursuant to this Resolution is declared by the City Clerk to be **Thursday, August 17, 2018, at 5:00 p.m.** Each argument shall not exceed 300 words and shall be filed with the City Clerk, signed, and include the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.

**Section 2. Rebuttal Arguments.** Pursuant to Section 9285 of the Elections Code of the State of California, when the City Clerk has selected the primary arguments for and against the City Measure(s) which will be printed and distributed to the voters, the Clerk shall send copies of the primary argument in favor of the Measure(s) to the authors of the primary argument against, and copies of the primary argument against to the authors of the primary argument in favor. The authors or persons designated by them may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the City Clerk not later than **Tuesday, August 24, 2018 at 5:00 p.m.** Rebuttal arguments shall be printed in the same manner as the primary arguments. Each rebuttal argument shall immediately follow the primary argument which it seeks to rebut.

**Section 3. Prior Resolutions.** That all previous resolutions providing for the filing of primary and rebuttal arguments related to City measures are repealed.

**Section 4. November 6, 2018 Election.** That the provisions of Sections 1 and 2 shall apply only to the election to be held on November 6, 2018, and shall then be repealed.

**Section 5. Certification.** The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original Resolutions.

**PASSED, APPROVED AND ADOPTED** this 8th day of August, 2018.

_____
Lewis Pacheco, Mayor

ATTEST:

_____
Gabriela T. Garcia, Deputy City Clerk

APPROVED AS TO FORM:

_____
Carlos Campos, City Attorney
Best Best & Krieger