

RESOLUTION NO. 2020-40

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY OF A CERTAIN MEASURE RELATING TO RETAIL CANNABIS USES TAX AND REGULATION AT THE GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, AS CALLED BY RESOLUTION NO. 2020-25

WHEREAS, a General election on Tuesday, November 3, 2020 has been called by Resolution No. 2020-25, adopted on June 16, 2020, and

WHEREAS, the City Council also desires to submit to the voters at the election a question relating to retail cannabis uses, tax and regulation; and,

WHEREAS, on November 8, 2016 the electorate of the City of Costa Mesa voted on and approved the Costa Mesa Medical Marijuana Measure, known as Measure X. Measure X, codified as Ordinance 16-15, sets forth the specific area in the City within which medical cannabis distributors, manufacturers, processors, research and development laboratories, testing laboratories and transporters can be located; provides for City regulation of these cannabis businesses in a manner consistent with the statewide regulations; reaffirmed the existing ban on delivery, dispensaries and cultivation within the City; and imposed a gross receipts tax on all cannabis distributors, manufacturers, processors, testing laboratories, transporters, and research and development laboratories, as well as any other marijuana or cannabis business; and

WHEREAS, pursuant to Ordinance 18-4, the City Council amended various code sections adopted by Measure X to allow and permit adult use cannabis products to be manufactured, distributed, transported, tested and developed in the same manner and areas as medical cannabis uses pursuant to Measure X, to maintain the existing bans on retail sales and delivery of cannabis and to otherwise revise provisions of the Municipal Code to achieve consistency with state law; and

WHEREAS, Measure X provided that any future changes or amendments to Ordinance 16-15, including any future changes or amendments any Municipal Code section affected by the Measure or a reduction in the tax imposed by this Measure, may

occur in the manner set forth in the Government Code and the City's Municipal Code, and shall not require a vote of the people, except that any future change or amendment to Ordinance 15-16 related to dispensaries and/or cultivation or the specific area within the City where such businesses may be located shall require a vote of the people; and

WHEREAS, California voters approved the legalization of cannabis for adult use in 2016. Allowing the legal sale of recreational cannabis in City of Costa Mesa is estimated to generate up to \$3 million for essential city services and infrastructure maintenance and improvements; and,

WHEREAS, increasingly, the state of California has shifted responsibility for many programs back to local cities, including Costa Mesa, without the funds necessary to provide the services that local residents need. In fact, over the last five years, the state has taken more than \$21 million from Costa Mesa, in lost redevelopment funding alone; and,

WHEREAS, after the effects of COVID-19 are considered, the City experienced a revenue shortfall of nearly \$30 million in funding for local services in the upcoming year. Passage of this measure would add at least \$1.3 million to the City's general fund and limit and/or prevent cuts to basic services such as 911 emergency response and road repairs, and support for small businesses to help our local economy recover; and,

WHEREAS, the intent of this measure is to allow the City Council to adopt one or more ordinances that would amend Measure X and/or the Municipal Code sections affected by Measure X, to allow for retail sale and delivery of cannabis and/or cannabis products, in specified areas of the City, provided that such ordinances contain specified minimum standards, and to impose a 4% to 7% gross receipts tax upon such uses; and,

WHEREAS, the intent of this measure is also to limit the power of the City Council to adopt and/or amend such ordinances, by requiring that any such ordinance and/or amendment be adopted by a 2/3 vote of the entire City Council, and that it specifically limit such uses to the Commercial and/or the Green Zones, contain minimum standards, including specific distances from existing sensitive uses, labor

peace agreements for such businesses; and that the proceeds of this tax be subject to both an annual audit by an independent certified public accountant; and,

WHEREAS, this measure does not increase taxes on local Costa Mesa residents or all businesses within the City; and,

WHEREAS, this measure includes strict accountability requirements to make sure that funds are used effectively and as promised, including annual independent financial audits which will be available online and public disclosure of all spending; and,

WHEREAS, the City of Costa Mesa, pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) has determined that the Ordinance adopted by this measure is exempt pursuant to Section 15061(b)(3) of Title 14 the California Code of Regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. That the City Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election the following question:

Measure __: The City of Costa Mesa Retail Cannabis Tax and Regulation Measure	Response	Vote
Shall an ordinance authorizing, regulating, taxing retail sales/deliveries of cannabis; limiting locations of cannabis establishments to protect neighborhoods, schools, children; requiring security; imposing a gross receipts tax of 4% to 7% on retail cannabis businesses until ended by voters; raising approximately \$3,000,000 annually for maintaining 911 response, fire/public safety protection, parks, youth/senior services, addressing homelessness, retaining small businesses, other general services; requiring public disclosure, funds controlled locally; be adopted?	Yes	
	No	

SECTION 2. That the proposed measure submitted to the voters is attached hereto as Exhibit A.

SECTION 3. That the vote requirement for the measures to pass is a majority

(50% +1) of the votes cast.

SECTION 4. That 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. That notice of the time and place of holding the election is 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. That the City Clerk shall certify to the passage and adoption of this resolution.

PASSED AND ADOPTED this 21st day of July 2020.



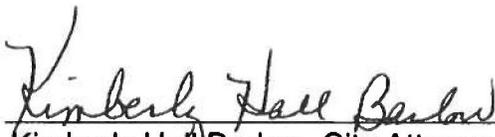
Katrina Foley, Mayor

ATTEST:



Brenda Green, City Clerk

APPROVED AS TO FORM:



Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

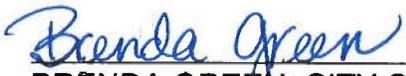
I, BRENDA GREEN, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that foregoing Resolution No. 2020-40 was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 21st day of July, 2020, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS: CHAVEZ, GENIS, MARR, REYNOLDS,
STEPHENS, AND FOLEY

NOES: COUNCIL MEMBERS: MANSOOR

ABSENT: COUNCIL MEMBERS: NONE

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 22nd day of July 2020.



BRENDA GREEN, CITY CLERK

Attachments:

1. Exhibit A – Proposed Ordinance: City of Costa Mesa Retail Cannabis Tax and Regulation Measure

CITY-SPONSORED MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The City Council for the City of Costa Mesa submits the following measure to the voters of the City for approval and enactment:

SECTION 1. Name.

This ballot measure shall be known and may be cited as "the City of Costa Mesa Retail Cannabis Tax and Regulation Measure" and shall be referred to herein as the "Measure."

SECTION 2. Purpose.

The purpose of the Measure is to amend Measure X to allow the City Council to adopt, and thereafter amend, by a 2/3 vote of the entire membership of the City Council, one or more ordinances to provide for the specific areas in the City within which City and state licensed cannabis retail storefront (dispensary) and non-storefront (delivery only) uses can be located; to provide minimum standards for future City regulation of these uses; and to impose a general tax on all retail and delivery cannabis businesses within the City, as well as on businesses making deliveries into the City if such deliveries are permitted by the City, at a rate of 4 to 7% of gross receipts. Nothing contained in this Measure is intended to limit, curtail or abrogate the City's power to impose greater restrictions or limitations on retail cannabis uses than those set forth herein.

Now, therefore, the People of the City of Costa Mesa do ordain as follows:

AN ORDINANCE OF THE PEOPLE OF THE CITY OF COSTA MESA, CALIFORNIA, TO AMEND MEASURE X BY AUTHORIZING THE CITY COUNCIL TO ADOPT AN ORDINANCE PERMITTING, REGULATING AND ESTABLISHING A GROSS RECEIPTS TAX OF BETWEEN 4 TO 7% ON THE RETAIL SALE AND DELIVERY OF CANNABIS WITHIN THE CITY AS EXPRESSLY LIMITED HEREIN.

SECTION 3. Uncodified ordinance.

The City Council of the City of Costa Mesa, pursuant to the procedures set forth in the Government Code and the City's Municipal Code and without prior approval of the electorate, may amend those provisions of Measure X that require a vote of the electorate as set forth in Ordinance No. 16-15, Section 8, "Future Changes", as amended and as codified in Chapters I and VI of Title 9 and/or Chapters IV and IX of Title 13 of the Municipal Code, by the adoption or amendment of one or more ordinances to permit, regulate and/or impose a gross receipts tax upon the retail sale, both storefront (dispensaries) and non-storefront (delivery), of cannabis within the City, provided that

such ordinance or amendment is adopted by a two-thirds vote of the entire membership of the City Council and meets the following minimum standards:

- a) the premises of retail storefront uses may be permitted in the commercial zone only;
- b) the premises of retail non-storefront (delivery) uses may be permitted in both the commercial zone and in the Green Zone only;
- c) the premises of retail storefront uses must be located a minimum of 1,000 feet from existing and permitted child daycare locations, K-12 schools, playgrounds, and/or homeless shelters, all as defined in the Zoning Code or as may otherwise be defined by City regulation or ordinance;
- d) security measures including but not limited to exterior lighting, video monitoring and security guards;
- e) for retail uses with two or more employees, a requirement for a labor peace agreement;
- f) imposes and/or maintains a gross receipts tax of no less than 4% and no more than 7% on all retail cannabis uses, which shall be applicable to all retail uses with physical premises in the City and, if so permitted by the City, to any retail non-storefront (delivery) use located outside the City that delivers cannabis within the City; and
- g) to ensure accountability, public disclosure and transparency, requires that the proceeds of this tax be subject to an annual audit by an independent certified public accountant which shall be reported to the City Council in a document or documents posted on the City's website and available for public inspection.

SECTION 4. Definitions.

The "Green Zone" means those portions of the manufacturing park (MP) and planned development industrial (PDI) zones that are located both north of South Coast Drive and west of Harbor Boulevard, excluding any portion of the South Coast Collection. "Labor peace agreement" means an agreement as set forth in section 26001 of the Business and Professions Code. "Retail storefront" and "retail non-storefront" shall mean and include only those retailers operating in full compliance with all applicable state and local laws and regulations, including but not limited to those set forth in Title 16, Division 24, Chapter 3 of the California Code of Regulations.

SECTION 5. Future Changes.

Any future changes or amendments to this ordinance, including any future changes or amendments to any Municipal Code section affected by this Measure, may occur in the manner set forth in the Government Code and the City's Municipal Code, by a two-thirds vote of the entire City Council and shall not require a vote of the people, except that any future enlargement of the areas within which retail cannabis uses may be located, any reduction in the minimum standards set forth herein and/or any reduction in the gross receipts tax below 4% or any increase above 7% shall require a vote of the people.

SECTION 6. Inconsistencies.

Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 7. Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The People of the City of Costa Mesa hereby declares that they would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 8. Effective Date.

This ordinance shall take effect according to law ten days after certification of the election at which it is adopted.