A Resolution
Establishing a Cannabis Tax

- Definition of a resolution
- Difference between resolution & ordinance/reasoning on the general structure of the document
Special notes about the Resolution, pages 8-10 (sections 1-13)

- i.e. limits on the ballot question, that it is for revenue, not for regulation, etc.
Model Special Tax Ordinance

- Definition & Procedural details
What Kind of Tax?

- Gross receipts, not sales
  - Gross receipts tax reasoning
- Consistency with business license tax
Important definitions

- **Cannabis business** means the activity of any natural or legal person, business, or collective in the [City/unincorporated areas of the County] relating to cannabis, including but not limited to cultivation (including nurseries), transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, delivery and sales (including both wholesale and retail sales) of cannabis, cannabis products, or any accessories for the use of cannabis or cannabis products, whether or not carried on for gain or profit, whether for medical or recreational use, and whether or not such business is licensed by the State. A cannabis business does not include any business the only relationship of which to cannabis or cannabis products is the production or sale of cannabis accessories.

- **High potency** cannabis or cannabis product means cannabis or cannabis product containing more than 17% tetrahydrocannabinol (THC), excluding edibles containing ten 10 mg or less of THC per dose.
Tax Option 1

- Tax adult-use, commercial cannabis...
  - Up to 15% of gross receipts, OR
  - Up to $10/sq ft of cultivation area
Tax Option 2

- Tax adult-use, commercial cannabis...
  - Up to 15% of gross receipts, AND
  - Up to 1% of gross receipts per each 1% THC in cannabis products over 17% THC sold, OR
  - Up to $10/sq ft of cultivation area
Tax on THC example

- Cannabis product with 70% THC content earning gross receipts of $1,000
  - 70% - 17% = 53% times $1,000 = $530
Features of the Ordinance

- Tax Ceiling
- Creating Flexibility
- Cultivation Tax
- General vs Dedicated Tax
- Registration
- Administration of the Tax
- Constitutionality
- Effective Date
Tax Ceiling, Not Floor

- Tax UP TO 15%
- Start lower
Creating Flexibility

- Increases allowed without returning to voters
Cultivation Tax

- Tax by sq ft rather than amount of product produced
- Tax credit
- Use land use power to make the land provide security for the tax payment, so the grower doesn’t abscond with the tax bill unpaid
General vs Dedicated Tax

- Special taxes require 2/3-voter approval
- While that is more attainable for cannabis than other taxes, it is still a steep hill
- Alternatives include a general tax with political promises and a general tax with an advisory measure
Registration

• Most agencies have separate ordinances to regulate cannabis commercial activity (typically in the zoning ordinance) and to tax it (commonly in a stand-alone chapter or in the business license tax)

• One or both ordinances should require businesses to register, list their responsible parties, and list their locations, uses, etc.
Administration of the Tax

- Often best to treat as a special case of the business license tax and use that existing mechanism for collection
- Consider land security for grow taxes
Constitutionality and legality

- California charter cities can impose any tax that does not violate other constitutional provisions and general law cities can do what charter cities can.
- Counties have statutory authority to tax business activity.
- Cannot impose a sales tax or a property tax, though.
Gann limit

- Cal. Const. art. XIII B limits what a government agency can spend from the “proceeds of taxation”
- If the cap is reached, agency must lower taxes, refund the money or both
- Voters can override the cap for 4 yrs at a time
- Not likely an issue until the economy recovers
Effective Date

- Local government ballot measures take effect 10 days after the vote is certified. May be best to make them effective 1/1 or 7/1 to allow time to set up tax administration, get the word out, etc.
Advantages of this Model

- Tax payment does not authorize activity
- Taxes are due even on illegal activity (Al Capone went to jail for tax evasion)
Disadvantages of this Model

- It has the administrative burdens of a business license tax and can be challenging to enforce for an industry just coming into a lawful market place with norms and informality not suited to complying with state and local rules.
- Grow taxes can seem unfair as they do not account for the risk of crop failure (but that can be falsely claimed).
Timing

- Measures can be placed on the ballot 88 days before an election (8/7 for 11/3/20) but 120 days will make elections officials breathe easier.
- They can be proposed on a single resolution, not 2 readings and 30 days to effectiveness like ordinances.
Non-profit monopoly

- Like some states with state monopolies on alcohol, some propose such a monopoly on cannabis to promote public health policies
- Non-profits immune from business taxes
- But a community can require franchise fees or concession payments
Grass Valley

- Placed a tax on the 11/3/20 ballot
- Using PHI’s model ordinance with
  - 1% per % on products w/ > 17% THC
  - Add’l 20% gross receipts tax on canna-pops
- Tax rates otherwise match Nevada City’s
  - Canopy tax and gross receipts tax on retail, manufacturing, testing
- Regulatory ordinance to follow on Ojai model