

**ITEM 3 ATTACHMENT
RESOLUTION NO. 2020-1696**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALABASAS
ADOPTING THE BALLOT LABEL FOR THE GENERAL CANNABIS TAX
MEASURE SUBMITTED TO THE QUALIFIED ELECTORS OF THE CITY
OF CALABASAS AT THE GENERAL MUNICIPAL ELECTION TO BE HELD
ON NOVEMBER 3, 2020.**

WHEREAS, Elections Code section 9222 authorizes the City Council to submit a measure to the voters to levy a tax for general purposes to be approved or rejected by a simple majority of the qualified voters of the city voting in an election on the issue; and

WHEREAS, the City Council proposed to the City's voters an ordinance to impose a general tax on commercial cannabis activity in the City (the "Ordinance"), attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, the general tax on commercial cannabis activity shall be used for any lawful purpose, including public safety, roads and transportation, parks and recreation, as well as other general City services; and

WHEREAS, the Ordinance imposes a general tax of up to ten percent (10%) of gross receipts on commercial cannabis activity, with the rate to be set by the City Council by Resolution within the ten percent limit, to be collected as set forth in the Ordinance; and

WHEREAS, under California Constitution, article XIII C, section 2, subdivision (b) and Government Code section 53723, no local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote of the qualified electors voting in the election; and

WHEREAS, the qualified voters of the City of Calabasas have the authority under Article XIII C, section 2 of the California Constitution to approve general tax proposals such as a tax on cannabis manufacturing, distribution, retail, and other related commercial cannabis activities within the City; and

WHEREAS, California Constitution, article XIII C, section 2, subdivision (c) requires the approval of a simple majority of voters to approve this general tax if it is to be effective; and

WHEREAS, on July 15, 2020, the City Council adopted Resolution 2020-1693 to present the Ordinance to voters at the General Election for November 3, 2020,

(the "Election") so they may determine whether to impose a general tax on the commercial cannabis activity in the City; and

WHEREAS, the City Council desires to submit the Tax to the electorate at the Election;

NOW, THEREFORE, BE IT RESOLVED, THAT THE CITY COUNCIL OF THE CITY OF CALABASAS DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Recitals:

All of the foregoing recitals are true and correct

SECTION 2. Ballot Label Adoption:

Under Elections Code sections 324 and 10201, the City Council of the City of Calabasas hereby declares that the ballot label for the proposed Calabasas Cannabis Tax measure submitted to the voters at the General Municipal Election to be held on November 3, 2020, per Resolution No. 2020-1693, shall read as follows:

Shall the measure imposing a City of Calabasas tax of up to 10% on cannabis businesses, without changing the City’s existing prohibition on cannabis dispensaries, raising up to \$10,000 each year until voters decide otherwise, with additional revenue of up to \$300,000 per dispensary expected if the state or City ever allow cannabis dispensaries to operate in the City, to fund general City services, be adopted?	YES
	NO

SECTION 3. Implementation:

The City Clerk is directed to file certified copies of this Resolution, with the Los Angeles County Board of Supervisors and Los Angeles County Registrar of Voters, pursuant to Elections Code section 10403. The City Clerk is further authorized and directed to perform all other acts necessary or required by law to implement this Resolution and related to the election.

SECTION 4. CEQA:

The City Council determines this Resolution is exempt from review under the California Environmental Quality Act (CEQA). Pursuant to section 15061(b)(3) of the CEQA Guidelines, CEQA applies only to projects which have the potential for causing a significant effect on the environment. The adoption of a resolution relating to a General Municipal Election is not a project within the meaning of CEQA Guidelines section 15378, subsection (b)(3).

SECTION 5. Effective Date

This resolution shall take effect on the day of adoption.

SECTION 6. 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 5th day of August 2020.

Alicia Weintraub, Mayor

Maricela Hernandez, City Clerk
Master Municipal Clerk
California Professional Municipal Clerk

APPROVED AS TO FORM:

Scott H. Howard
Colantuono, Highsmith & Whatley, PC
City Attorney

Attachment: Exhibit A Proposed Ordinance No. 2020-384

**EXHIBIT A TO RESOLUTION NO. 2020-1696
ORDINANCE NO. 2020-384**

**AN ORDINANCE OF THE CITY OF CALABASAS,
CALIFORNIA, ADDING ARTICLE 7 TO TITLE 8, CHAPTER
1 OF THE CALABASAS MUNICIPAL CODE TO ESTABLISH
A GENERAL BUSINESS LICENSE TAX ON CANNABIS
BUSINESS ACTIVITY.**

WHEREAS, California voters approved Proposition 215 (Health and Safety Code Section 11362.5), entitled the Compassionate Use Act (CUA), in 1996, which exempts patients and their primary caregivers from criminal prosecution or sanctions under H&S Code Sections 11357 and 11358 for qualified use and cultivation of medical cannabis; and

WHEREAS, the California Legislature passed Senate Bill 420 (H&S Code Sections 11362.7 et seq.) in 2003 to create the Medical Marijuana Program (MMPA), which established a voluntary program for the issuance of medical cannabis identification cards for qualified patients, set limits on the amount of cannabis any individual could possess, and provided an exemption from state criminal liability for persons “who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes”; and

WHEREAS, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was passed by California voters on November 8, 2016, as Proposition 64; and

WHEREAS, many of the AUMA’s provisions took effect on November 9, 2016; and

WHEREAS, among other effects, the AUMA authorizes the adult use of cannabis by persons aged 21 years or older, and regulates personal and commercial activities related to adult cannabis use; and

WHEREAS, on June 27, 2017, the Governor signed into law Senate Bill 94 creating a single regulatory mechanism for both medical and adult-use cannabis – the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (MAUCRSA). Under MAUCRSA, local governments retain broad authority over most cannabis activity and businesses; and

WHEREAS, the City has no local tax on cannabis business operations; and

WHEREAS, AUMA and MAUCRSA do not preempt local taxation of cannabis operations; and

WHEREAS, this ordinance proposes such a tax on the terms presented for consideration by the voters; and

WHEREAS, the City Council desires that revenue generated from this cannabis tax be spent for general City purposes; and

WHEREAS, this cannabis tax is imposed to raise revenue and not for regulation; and

WHEREAS, this cannabis tax does not modify the City's existing prohibition against cannabis businesses operating in the City under Calabasas Municipal Code sections 8.13.030 and 17.12.125; and

WHEREAS, this ordinance is intended to ensure a cannabis tax is in place in the event that the state requires the City to allow cannabis businesses.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF CALABASAS, CALIFORNIA DO ORDAIN AS FOLLOWS:

SECTION 1. Findings. The People of the City of Calabasas hereby determine that the foregoing findings are true and correct, and incorporate them herein by reference.

SECTION 2. Code Amendment. The Calabasas Municipal Code is hereby amended to add Article 7, Cannabis Business General Tax to Title 3, Chapter 56 as set forth below, enacting a general tax on the privilege of conducting business relating to cannabis in the City of Calabasas.

Section 3.56 Cannabis Business General Tax

Sections

- 3.56.010 Title.
- 3.56.020 Effective Date.
- 3.56.030 Purpose.
- 3.56.040 Definitions.
- 3.56.050 Cannabis Business Tax.
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- 3.56.110 Returns and Remittances.
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- 3.56.130 Refunds.
- 3.56.140 Enforcement.

- 3.56.150 Successor and Assignee Responsibility.
- 3.56.160 Debts, Deficiencies, and Assessments.
- 3.56.170 Apportionment.

Section 3.56.010. Title.

- (a) This ordinance shall be known as the “Cannabis Business Tax Ordinance.”

Section 3.56.020. Effective Date.

- (a) This ordinance shall take effect ten days after the certification of its approval by a simple majority of the City’s voters at a regularly scheduled general election, pursuant to California Constitution, Article XIII C, section 2, subdivision (c).

Section 3.56.030. Purpose

- (a) This ordinance is intended to achieve the following purposes, among others, and shall be interpreted to accomplish such purposes:
 - (1) Impose a tax on the privilege of conducting the following activities within the City’s jurisdiction: transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, donating, selling, or delivering, or distributing cannabis, cannabis products, cannabis accessories, or cannabinoid preparations delivering, or distributing cannabis, cannabis products, cannabis accessories, or cannabinoid preparations commercial cannabis businesses in the City of Calabasas, under the Control, Regulate and Tax Adult Use of Marijuana Act and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (California Business and Professions Code sections 26000, *et seq.*). as they now exist or may be amended from time to time, and local law, whether or not conducted in compliance with such laws;
 - (2) Impose a general tax that generates revenue that may be used by the City for any lawful purpose, including, but not limited to, general City services, public safety, road and transportation purposes, parks and recreation purposes, and other City services;
 - (3) Specify the type of tax and rate of tax to be levied and the method of collection, and general fund purposes; and
 - (4) Comply with all requirements for imposition of a general tax.

(b) This chapter is enacted solely to raise revenue and not for regulation. It is not a sales and use tax, a tax upon income, a transient occupancy tax, utility user tax, or a tax upon real property, and does not change any obligations under those taxes. It shall apply to all persons engaged in cannabis businesses in the City. The tax imposed by this chapter is a general tax under Articles XIII A and XIII C of the California Constitution.

(c) This chapter does not authorize the conduct of any business or activity in the City but provides for the taxation of such businesses or activities as they occur. Neither the imposition of such tax by the City nor the payment of such tax by the taxpayer shall imply that the activity being taxed is lawful. This chapter shall apply to each cannabis business in the City, whether or not such business has a permit issued pursuant to the City of Calabasas Municipal Code.

Section 3.56.040. Definitions

(a) "Adult use" of cannabis or cannabinoid preparations means the use permitted by Section 11362.1 of the California Health & Safety Code.

(b) "Cannabis" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" does not include:

(1) Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or

(2) The weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other products.

(c) "Cannabis, adult-use" means cannabis or cannabis products intended to be sold for use by adults 21 years of age and over who do not possess a physician's recommendation for the use of cannabis issued in accordance with the Compassionate Use Act of 1996 (California Health and Safety Code; § 11362.5).

(d) "Cannabis accessories" is defined as that term is defined in California Health and Safety Code section 11018.2.

(e) "Cannabis business" means any business that conducts any, all, or a portion of the following activities: transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, donating, selling, retailing, delivering, or distributing cannabis, cannabis products, cannabis accessories, or cannabinoid preparations by commercial cannabis businesses, in the City of Calabasas, under the Control, Regulate and Tax Adult Use of Marijuana Act and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (California Business and Professions Code sections 26000, et seq.). as they now exist or may be amended from time to time, and local law, whether or not conducted in compliance with such laws.

(f) "Cannabinoid preparations" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

(g) "Delivery" or "delivering" means the commercial transfer of cannabis or cannabinoid preparations to a customer and is a component of retail commercial cannabis activity. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer or independently licensed under California law that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabinoid preparations.

(h) "Gross receipts" means the following: (1) the total amount of consideration actually received or receivable from all sales; (2) the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature, for which a charge is imposed or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; (3) any and all rents, royalties, fees, commissions, or dividends received or receivable, and (4) gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction or setoff therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever except the following shall be excluded therefrom:

1. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "gross receipts";

2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

3. Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;

4. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded;

5. Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the administrator with the names and addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustee;

6. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities, and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of business;

7. Receipts derived from the occasional sale of used, obsolete, or surplus trade fixtures, machinery, or other equipment used by the taxpayer in the regular course of the taxpayer's business;

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

9. Transactions between a partnership and its partners;

10. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a

Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection 10., above; and

11. Receipts from services or sales in transaction between affiliated corporations; an affiliated corporation is defined as a corporation:

a. Which owns at least eighty percent of the voting and non-voting stock of such other corporation; or

b. The voting and non-voting stock of which is owned at least eighty percent by such other corporation with which such transaction is had; or

c. At least eighty percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.

As to any person engaged in the business of manufacturing or processing any goods, wares, merchandise, article or commodity at a fixed place of business within the City which does not generate gross receipts as defined herein within the City, gross receipts shall be deemed to include the total of all expenses incurred in the manufacturing or processing of such goods at the business location within the City for payroll, utilities, depreciation, and/or rent. As to any person engaged in the business of operating an administrative headquarters at a fixed place of business within the City who does not have gross receipts as defined herein within the city, gross receipts shall be deemed to include the total gross payroll of all persons employed at such administrative headquarters.

Notwithstanding the foregoing, for any cannabis microbusiness, which conduct cannabis manufacturing, distribution, and retail activities, the gross receipts of such business shall include the gross receipts earned at each of the three stages of the cannabis microbusiness activities, including the gross receipts earned or which would be earned upon the value of cannabis manufactured by the cannabis microbusiness, the gross receipts earned or which would be earned upon the value of cannabis distributed by the cannabis microbusiness, and the gross receipts earned or which would be earned upon the value of cannabis sold by the cannabis microbusiness; whether or not, for each stage of the cannabis microbusiness, the product of the cannabis manufacturing, distribution, and retail activities is sold or transferred from the cannabis microbusiness.

(i) "Medical use" of cannabis or cannabinoid preparations means the use permitted by the Compassionate Use Act (California Health & Safety Code, § 11362.5) and the Medical Marijuana Program Act (California Health & Safety Code, § 11362.7 et seq.).

(j) "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

(k) "Primary Caregiver" is defined as that term is defined in California Health and Safety Code section 11362.7, subdivision (d).

(l) "Qualified Patient" means a seriously ill person who obtains a written recommendation from a physician licensed to practice medicine in the State of California to use cannabis for personal medical purposes. In addition, persons currently under the care of a physician for a "serious medical condition" as that term is defined in California Health and Safety Code section 11362.7, subdivision (h) are presumed to be "qualified patients."

(m) "Manufacture" means the production, preparation, or compounding of cannabis products, including extraction processes, infusion processes, the packaging or repackaging of manufactured cannabis or cannabis products, and labeling or relabeling the packages of manufactured cannabis or cannabis product.

(n) A "manufacturing" or "manufacturing operation" means all aspects of the manufacture, extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products. "Manufacturing" shall also include any processing, preparing, holding, or storing of components and ingredients.

(o) A "volatile solvent" shall mean any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.

(p) A "non-volatile solvent" shall mean any solvent used in the extraction process that is not a volatile solvent, including carbon dioxide.

(q) A "microbusiness" shall mean any commercial adult-use cannabis business that engages in commercial manufacturing, distribution, and retail sales of cannabis for adult-use and medical purposes.

(r) Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

Section 3.56.050. Cannabis Business General Tax

(a) There is hereby imposed on every cannabis business in the City an annual tax at a rate to be established from time to time by resolution of the City Council. The tax for all cannabis businesses shall be imposed with respect to the gross receipts of such businesses up to a maximum of ten percent (10%), of the business' gross receipts. The tax imposed under this section shall be due and payable as provided in section 8.56.120.

(b) The City Council may by resolution, in its discretion, implement a tax rate lower than the maximum rate established in subsection (a) of this section for all persons engaged in a cannabis business in the City, or establish differing tax rates for each of different categories of cannabis business activities. The City Council may, by resolution, also decrease or increase any such tax rate from time to time, provided that the tax rate shall not, at any time, be above the maximum tax rates established in subsection (a) of this section.

(c) All gross receipts earned from transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, donating, selling, retailing, delivering, or distributing cannabis, cannabis products, cannabis accessories, or cannabinoid preparations by commercial cannabis businesses, in the City of Calabasas, to an authorized medical cannabis patient or authorized medical cannabis patient's designated primary caregiver who possesses a county-issued medical cannabis identification card issued and valid under the provisions of Health and Safety Code Section 11362.71, et seq. shall be exempt from taxation under this chapter.

Section 3.56.060. Registration of Cannabis Business

(a) All persons engaging in a cannabis business, whether an existing, newly-established or acquired business, shall register with the City Manager's office by the later of (i) 30 days of commencing operation or (ii) by the effective date of the ordinance adding this section to the Cannabis Municipal Code and shall annually renew such registration no less frequently than one calendar year after the date of the most recent registration. In registering, such persons shall furnish to the City Manager a sworn statement, upon a form provided by the City Manager, setting forth the following information:

- (1) The name of the business;
- (2) The names and addresses of each owner;
- (3) The nature or kind of all business activity to be conducted;
- (4) The place or places where such business is to be carried on; and
- (5) Any further information which the City Manager may require.

(b) Registrants shall pay an annual registration fee in an amount established from time to time by ordinance or resolution of the City Council to recover the City's costs to implement the taxes imposed under this chapter, the registration requirement of this section, and the other provisions of this chapter. As a regulatory fee, such fee shall be limited to the City's reasonable regulatory costs.

(c) The tax registration certificate required, and the License required under Title 4, Chapter 26 of this Code may constitute a single document.

Section 3.56.070. Payment Obligation

All taxpayers subject to a tax under this this chapter shall pay that tax regardless of any rebate, exemption, incentive, or other reduction set forth elsewhere in this Code, except as required by state or federal law. Failure to pay such a tax shall be subject to penalties, interest charges, and assessments as provided in this chapter and the City may use any or all other code enforcement remedies available at law or in equity. No provision of this Code shall be interpreted to reduce a tax rate established under this chapter or otherwise reduce the taxes paid hereunder unless the provision specifically expresses that reduction.

Section 3.56.080. Tax Payment Does Not Authorize Activity

The payment of a tax imposed under this chapter shall not be construed to authorize the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter authorizes or implies the lawfulness of any activity connected with the distribution or possession of cannabis unless otherwise authorized and allowed in strict and full conformance with this Code, including without limitation the provisions of Title 8, Chapter 13. Nothing in this chapter shall be applied or construed as authorizing the sale, cultivation (including nurseries), transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, delivery and sale (wholesale and/or retail sales) of cannabis, cannabis products, or any accessories for the use of recreational cannabis or cannabis products.

Section 3.56.090 Cannabis Tax is Not a Sales Tax

The taxes provided for under this chapter are excise taxes on the privilege of conducting a cannabis business in the City and legally incident on those engaged in such business. They are not sales or use taxes and shall not be calculated or assessed as such. Nevertheless, at the option of the taxpayer, the tax may be separately identified on invoices, receipts and other evidences of transactions.

Section 3.56.100. Amendments, Rate Adjustments, and Administration

(a) The voters of the City of Calabasas approved this chapter. Any amendment to this chapter to increase the taxes above the maximum rate provided in Section 3.56.050 requires further voter approval. The voters authorize the City Council to set the tax rates at or below the maximum rate or rates for differing categories of cannabis businesses, or otherwise to amend, modify, change, or revise any other provision of this chapter as the City Council deems in the best interest of the City. In addition, the City Council may establish exemptions, incentives, or other reductions, and penalties and interest charges or assessments for failure to pay the tax when due, as otherwise allowed by the City Charter, the City's Municipal Code, and California law.

(b) The City Manager, in consultation with the Chief Financial Officer and City Attorney, may adopt administrative policies to promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the taxes imposed by this chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the taxes as provided. Such policies shall be: (i) effective upon the date specified in the policy; (ii) signed by the City Manager and City Attorney; and (iii) be made publicly available through the City Clerk.

(c) The City shall annually audit the cannabis taxes imposed by this chapter to verify that tax revenues have been properly collected and expended in accordance with the law.

(d) Pursuant to California Constitution, Article XIII B, 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 taxes and fee imposed by this chapter.

Section 3.56.110. Returns and Remittances

- (a) The taxes imposed by this chapter shall be due and payable as follows:
 - (1) Each cannabis business owing tax under this chapter shall provide a tax return to the City Manager within thirty days following the last day of the month stating the tax owed for that month, and the basis of its calculation. The taxpayer shall remit the tax owed to the City Manager when the return is due whether or not a return is filed as required.
 - (2) All tax returns shall be completed on forms provided by the City Manager.
 - (3) Tax returns and payments for all outstanding taxes, fees, penalties and interest owed the City are immediately due upon cessation of business for any reason.
- (b) Whenever any payment, statement, report, request or other communication is received by the City Manager after the time prescribed by this section for its receipt but is in an envelope postmarked on or before the date prescribed by this section for its receipt, the City Manager shall regard such payment, statement, report, request, or other communication as timely. If the due date falls on Saturday, Sunday, or a City holiday, the due date shall be the last earlier business day on which City Hall is open to the public.
- (c) Unless otherwise specifically provided by this chapter, the taxes imposed by this chapter shall be deemed delinquent if not paid on or before the due date specified in subsection (a) of this section.
- (d) The City Manager need not send a delinquency or other notice or bill to any person subject to a tax or fee imposed by this chapter and failure to send such notice or bill shall not affect the validity of any tax, fee, interest or penalty due under this chapter.

3.56.120. Failure to Pay Timely

- (a) Any person who fails or refuses to pay any tax or fee imposed by this chapter when due shall pay penalties and interest as follows:
 - (1) A penalty equal to ten (10) percent of the tax or fee, in addition to the amount of the tax; and
 - (2) An additional penalty equal to twenty-five (25) percent of the amount of the tax or fee if unpaid for more than a month beyond the due date; and
 - (3) Interest charges on the amount of any and all unpaid taxes, fees, or penalties at the rate of one percent (1%) interest per month from the date due until paid. Interest shall be applied at the rate of one percent (1.0%) per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

(b) If a check is submitted in payment of a tax or fee and is returned unpaid by the bank upon which drawn, and the check is not redeemed before the due date, the taxpayer will be liable for the tax or fee due plus penalties and interest as provided for in this section plus any amount allowed under state law for the returned check.

(c) The tax due shall be that amount due and payable from the latter of (i) the effective date of the taxes under this chapter as determined by resolution of the City Council or (ii) the first date on which the cannabis business first operated in the City.

(d) The City Manager may waive some or all of the penalties imposed by this section as to any person if:

(1) The person provides evidence satisfactory to the City Manager 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 or fee and accrued interest owed the City upon applying for a waiver.

(2) A waiver authorized by this subsection shall not apply to the tax, fee, or interest and may be granted only once during any 24-month period.

Section 3.56.130. 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) Any person entitled to a refund of sums paid under this chapter may elect to have such refund applied as a credit against future obligations under this chapter.

(d) Whenever any tax, fee, penalty, or interest under this chapter has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City, such amount shall be refunded to the person who paid the tax upon a timely written claim for refund filed with the City Manager.

(e) The City Manager may examine and audit all the books and business records of the claimant to determine eligibility to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of the claimant's books and business records.

(f) A sum erroneously paid under this chapter due to an error of the City shall be refunded to the claimant in full upon a timely claim. If an error is attributable to the claimant, the City may retain an amount established by ordinance or resolution of the City Council from time to time in an amount sufficient to recover the City's cost to process the claim and refund the balance.

(g) The City Manager shall initiate a refund of any sum overpaid or erroneously collected under this chapter whenever the overpayment or erroneous

collection is disclosed by a City audit for the period of time unprotected by the duty to file a timely claim under the Government Claims Act.

Section 3.56.140. Enforcement

(a) The City Manager shall enforce this chapter.

(b) The City Manager may audit and examine all business locations, books and records of cannabis businesses, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of a cannabis business to ascertain any tax due under this chapter and to verify any returns or other information any person submits to the City under this chapter. If a cannabis business, after written demand by the City Manager, refuses to make available for audit, examination or verification such locations, books, and records as the City Manager requests, the City Manager may, after full consideration of all such information as is available make an assessment of the tax or fee due and demand payment from the tax- or fee-payer, together with any penalties and interest due for late payment.

(c) The conviction and punishment of any person for failure to pay a sum required under this chapter shall not excuse or exempt such person from any civil action for the debt. No civil action shall prevent a criminal prosecution for any violation of this chapter or of any state law requiring the payment of all taxes. No election of remedies shall apply to the enforcement of this chapter or any other provision of this Code and the City may pursue one or more remedies in its discretion provided only that no double recovery shall be permitted.

(d) Any person violating any of the provisions of this chapter or any regulation or rule adopted pursuant to it, or knowingly or intentionally misrepresenting any material fact to the City in procuring a certificate or document from the City under this chapter, or under Title 4, Chapter 26, shall be deemed guilty of a misdemeanor unless the City Attorney, in his or her discretion, elects to prosecute it as an infraction.

(e) In addition to the penalty imposed for a failure to timely pay any tax or fee imposed by this chapter, pursuant to Section 8-1.712, the City Manager shall have the discretion to issue an administrative citation with respect to said failure and impose an administrative fine in the amount of \$2,000 for each month that any payment of tax is overdue. Each cannabis business subject to any such administrative citation and fine shall have the opportunity to appeal same pursuant to the process set forth in Title 8 of this Code.

(f) In the event that any appeal as to an administrative citation and fine pursuant to this Section 8-1.714, or any other action in relation thereto takes place, the City shall be entitled to recover its attorneys' fees and administrative costs incurred unless the appeal in question is granted, or the cannabis business initiating any other action is the prevailing party.

Section 3.56.150 Successor and Assignee Responsibility

(a) If any person, while liable for any amount under this chapter, sells, assigns or otherwise transfers half or more of a taxed cannabis business, whether voluntarily or involuntarily, the person's successor, assignee or other transferee, or other person or entity obtaining ownership or control of the business ("transferee") shall pay that amount when due. A transferee shall notify the City Manager of a transfer 30 days before the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business is made less than 30 days before the date of transfer, on the first day the City is open for business after the transfer.

(b) A transferee shall be deemed to have satisfied an unpaid liability if the transferee complies with the requirements of California Revenue and Taxation Code Section 7283.5 and this section by withholding from the purchase price, for the benefit of the City, an amount sufficient to cover the liability, or by otherwise paying the liability and obtaining from the City Manager a "Tax Clearance Certificate" showing that all outstanding liability has been paid through the date of transfer.

(c) Within 90 days of receiving a written request from a transferee, the City Manager may issue a "Tax Clearance Certificate" stating either the amount due as to the business under this chapter or stating that there is no liability due for the business through a stated date. The City Manager may also request financial records from the transferor to audit the amount due under this chapter. The City Manager shall issue a tax clearance certificate within 30 days of completing the audit, stating any amount owed, unless the City Manager determines the records provided for audit are insufficient to determine whether taxes, fees, penalties and/or interest are due and in what amounts. If so, the City Manager may rely on available information to estimate any amount due and shall issue a tax clearance certificate stating that amount. A written application for an appeal hearing on the amount assessed on a tax clearance certificate must be made within 10 days after the City Manager serves or mails the certificate. The appeal provision of Title 8 of this Code shall apply. If a timely application for a hearing is not made, the tax clearance certificate shall serve as conclusive evidence of the liability under this chapter associated with the business through the date stated on the certificate.

Section 3.56.160. Debts, Deficiencies, and Assessments

(a) The amount of any tax, fee, penalties, and interest imposed by this chapter shall be deemed a debt to the City and any person operating a cannabis business without first having procured a business license(s) and paid all requisite business license taxes, as provided in this Chapter and Titles 6 and 8 shall be liable in an action in the name of the City in any court of competent jurisdiction for the amount due.

(b) If no return or statement is timely filed, or if the City Manager is not satisfied that any return or other statement filed under this chapter is correct, or that the amount due is correctly computed, the City Manager may determine that amount and make a deficiency determination upon available information. The City Manager may make one or more deficiency determinations for a period or periods. When a

person discontinues engaging in a taxed business, the City Manager may make a deficiency determination may at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued before the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned as are notices of assessment under subsections (b), (c), and (d) of this section.

(c) Under any of the following circumstances, the City Manager may make and give notice of an assessment of taxes, fees, penalties and interest owed under this chapter:

(1) If the person has not filed any statement or return required by this chapter;

(2) If the person has not paid any tax, fee, penalty or interest due under this Ordinance;

(3) If the person has not, after demand by the City Manager, filed a corrected statement or return, or adequate substantiation of the information contained in a statement or return previously filed, or paid any additional amount due under this chapter;

(4) If the City Manager determines nonpayment of any amount due under this chapter or Titles 6 or 8 is due to fraud, a penalty of 25 percent of the amount of otherwise due shall be added thereto in addition to penalties and interest otherwise stated in this chapter.

(5) The notice of assessment shall separately set forth any amount the City Manager knows or estimates to be due under this chapter, including any penalties or interest accrued to the date of the notice.

(6) A notice of assessment shall be served upon the tax- or fee-payer either by personal service or by a deposit in the United States mail, postage prepaid, addressed to the address appearing on the cannabis business tax registration certificate, City cannabis license issued under Title 4, Chapter 26, or such other address as he or she may provide the City Manager in writing for notices under this chapter; or, should the person have no business tax certificate issued and no address provided to the City Manager for such purpose, then to such person's last known address. Service by mail is complete upon deposit in the United States mail as provided in this paragraph.

(c) Within 10 days after service of a notice of assessment, the tax- or fee-payer may apply in writing to the City Manager for a hearing on the assessment. If no timely application for a hearing is made, the amount assessed shall be final and conclusive. Within 30 days of the receipt of an application for hearing, the City Manager shall cause the matter to be set for hearing. The City Manager shall give notice of such hearing to the person requesting it not later than five days before the hearing. At such hearing, the applicant may appear and offer evidence why the assessment should not be confirmed. After such hearing, the City Manager shall determine the amount due under this chapter and shall give written notice to the person as prescribed in this chapter for giving notice of assessment. That decision is

final as to the City, but either the City or the applicant may seek judicial review as provided by California Code of Civil Procedure section 1094.5.

Section 3.56.170. Apportionment

(a) No tax imposed by this chapter shall be applied to occasion an undue burden upon interstate commerce or violate the equal protection and due process clauses of the Constitutions of the United States or the State of California.

(b) If any case where a business tax imposed under this chapter is believed by a taxpayer to place an undue burden upon interstate commerce or violate such constitutional clauses, the taxpayer may apply to the City Manager for an adjustment of the tax. It shall be the taxpayer's obligation to request in writing for an adjustment within one year after the date of payment of the tax. If the taxpayer does not request in writing within one year from the date of payment, then the taxpayer shall be conclusively deemed to have waived any adjustment for that year and all prior years.

(c) The taxpayer shall, by sworn statement and supporting testimony, show the method of business and the gross volume of business and such other information as the City Manager may deem necessary to determine the extent, if any, of such undue burden or violation. The City Manager shall then conduct an investigation and shall fix as the tax for the taxpayer an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be charged, the City Manager shall have the power to base the tax upon a percentage of gross receipts or any other measure which will assure that the tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this chapter.

(d) Should the City Manager determine the gross receipt measure of tax to be the proper basis, the City Manager may require the taxpayer to submit a sworn statement of the gross receipts and pay the amount of tax as determined by the City Manager.

SECTION 3. Amendment. To the extent authorized by Article XIII C of the California Constitution, this ordinance may be amended by the City Council without a vote of the People. Voter approval is required for any amendment that would increase, within the meaning of Government Code section 53750(h), the tax rates beyond the maximum rates authorized by this Ordinance.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The People hereby declare that they would have adopted this Ordinance and each portion thereof regardless of the fact that an invalid portion or portions may have been present in the Ordinance.

SECTION 5. CEQA. This measure to be submitted to the voters adopts a general tax to help compensate the City for the increased burden on law enforcement and public safety response due to the security issues created by commercial cannabis activity in the City, to raise revenue for public safety, road and transportation purposes, parks and recreation, and other general City services. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment. Therefore, under CEQA Guidelines section 15060, review under CEQA is not required.

SECTION 6. Effective Date. This Ordinance relates to the levying and collecting of the City's cannabis tax and shall not take effect until ten days after the certification of its approval by a majority vote of the electorate voting at the general election to be held on November 3, 2020 under Elections Code sections 9217 and 9222.

SECTION 7. Certification; Publication. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

PASSED, APPROVED AND ADOPTED this _ day of _ 2020.

, Mayor

Maricela Hernandez, City Clerk
Master Municipal Clerk
California Professional Municipal Clerk

APPROVED AS TO FORM:

Scott H. Howard
Colantuono, Highsmith & Whatley, PC
City Attorney