

**SPECIAL CITY COUNCIL MEETING
CITY HALL, 291 N. MAIN STREET
PORTERVILLE, CALIFORNIA
AUGUST 1, 2018, 5:30 PM**

Call to Order

Roll Call

ORAL COMMUNICATIONS

This is the opportunity to address the City Council on any matter scheduled for Closed Session. Unless additional time is authorized by the Council, all commentary shall be limited to three minutes.

CITY COUNCIL CLOSED SESSION:

A. Closed Session Pursuant to:

1 - Government Code Section 54956.9(d)(3) - Conference with Legal Counsel -
Anticipated Litigation - Significant Exposure to Litigation: One Case in which facts are not yet known to potential plaintiff.

**6:00 P.M. RECONVENE OPEN SESSION AND REPORT ON REPORTABLE ACTION
TAKEN IN CLOSED SESSION**

Pledge of Allegiance Led by Council Member Martha A. Flores

Invocation

ORAL COMMUNICATIONS

This is the opportunity to address the Council on any matter of interest, whether on the agenda or not. Unless additional time is authorized by the Council, all commentary shall be limited to three minutes.

SCHEDULED MATTERS

1. **Calling of City Election for Voter Approval of Authorizing Taxes on Cannabis Businesses**

Re: Consideration of calling a city election for voter approval of authorizing taxes on cannabis businesses.

ADJOURNMENT - to the meeting of August 7, 2018.

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Office of City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.

Materials related to an item on this Agenda submitted to the City Council after distribution of the Agenda packet are available for public inspection during normal business hours at the Office of City Clerk, 291 North Main Street, Porterville, CA 93257, and on the City's website at www.ci.porterville.ca.us.



CITY COUNCIL AGENDA – AUGUST 1, 2018

SUBJECT: Calling of City Election for Voter Approval of Authorizing Taxes on Cannabis Businesses

SOURCE: City Manager's Office

COMMENT: Consistent with the City's Charter, Mayor Stowe has requested the scheduling of this Special Meeting to consider the calling of a City election for voter approval of authorizing taxes on cannabis businesses. A draft model Ordinance involving the taxation of cannabis has been provided for Council's consideration and direction.

On March 7, 2017, the City Council held a study session regarding Proposition 64. The purpose of the study session was for City Council to review the Adult Use of Marijuana Act ("AUMA") and the portions of the new State law that allow additional local control, and to provide direction to staff concerning those areas of local control.

Council established an Ad Hoc committee consisting of Councilmembers Hamilton and Reyes and directed staff to coordinate a meeting of the committee.

On May 2, 2017, the Cannabis Ad Hoc committee met with staff members and two members of the community representing the cultivation of personal use cannabis. Chapter 21, Section 301.23 of the Porterville Municipal Code currently allowed a qualified patient to cultivate up to 12 medical marijuana plants outdoors, if the patient met the qualifications and was able to obtain a cultivation permit. With the passage of Proposition 64, individuals may cultivate up to six living marijuana plants indoors. The Police Department continued to advocate that the City Council consider allowing a maximum of six plants be cultivated (consistent with Prop. 64), regardless of whether the purpose is medical or recreational. The Police also recommended that no registration be required for said use. A city may allow the cultivation of the six plants, allowed by Prop. 64, to be cultivated outdoors. The community members present at the meeting were favorable to providing regulations to allow outdoor cultivation of no more than six plants and removing the requirement for a permit.

The Ad Hoc committee met with various staff members from the Police and Fire departments, as well as Community Development and Public Works, on August 15, 2017, to discuss the various types of commercial activities. Public Works staff, in light of the Sustainable Groundwater Management Act and the Council's goals for water conservation, strongly discourage commercial crop

cultivation in the Tule River sub-basin. The committee recognized that there have not been any meetings with representatives from the various types of commercial cannabis activities. Councilmembers requested an item be brought back to City Council in light of the fact that the law requires that if a jurisdiction wants to regulate commercial activity, the agency must have regulations in place by January 1, 2018.

At the Council's meeting of September 19, 2017, staff recommended repealing Ordinance 1817, and replacing said Ordinance with an Ordinance to permit the cultivation of up to six plants indoors or outdoors with certain restrictions, allowing those with an existing medical cannabis cultivation permit to continue until said permit expired, and prohibited all commercial cannabis activities to be in effect by January 1, 2018. At its meeting on November 7, 2017, consistent with staff's recommendation, Council gave second reading to Ordinance 1843.

RECOMMENDATION: That the City Council provide direction on the calling of a city election for voter approval of authorizing taxes on cannabis.

ATTACHMENTS: 1. Cannabis Tax Model Ordinance

Appropriated/Funded:

Review By:

Department Director:

Final Approver: John Lollis, City Manager

January 2018

Model Local Ordinance for Cannabis Taxation in California



Getting it Right
·from the Start·

Local Regulation of Recreational Marijuana

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The views expressed here do not necessarily reflect the views of the Foundation.

Note

This model ordinance is not intended as legal advice. For legal advice, readers should consult an attorney licensed in their state.

Introduction

This Model Local Cannabis Taxation Ordinance was prepared to help California cities and counties respond to the legalization of recreational cannabis approved by voters in 2016, the earlier legalization of medical cannabis, or both. It taxes only commercial activity, not the personal use permitted by Proposition 64 that involves no exchange of money or other value. Local jurisdictions must decide whether (1) to do nothing, in which case businesses may apply for a state license to sell cannabis starting January 1, 2018; (2) to ban the sale or manufacture of cannabis locally; or (3) to develop their own rules and regulations to govern the cultivation, production, sale, marketing and taxation of this product in their community. Alternatively, communities may decide to take more time to craft local policy through a temporary ban on certain cannabis business. Most communities opting to allow cannabis businesses to operate will tax those businesses. This Model provides an approach to local taxation that seeks to generate revenue to mitigate negative social and health effects of the cannabis industry, address other community needs, discourage youth and problem use of cannabis, particularly of more-dangerous, high-potency products.

The Model was developed by the Public Health Institute's ***Getting it Right from the Start: Local Regulation of Recreational Cannabis*** project, working in conjunction with Colantuono, Highsmith & Whatley, PC, which provided guidance as a municipal law firm, to help California cities and counties reduce negative health impacts of the legalization of recreational cannabis. Legalization is based on the idea that cannabis regulation should not primarily be a criminal justice issue. However, an unfettered market in cannabis should not be the substitute and is not more sensible for this potentially addictive intoxicant than for alcohol or tobacco, widely used substances which raise similar public health concerns as does cannabis. Rather, cannabis policy should be grounded in public health protection. Shifting from a criminal justice to a public health

paradigm requires careful consideration of how to regulate commercial cannabis activity. Cannabis possesses special health risks, and appropriate tax policies can help reduce harm. Of particular concern is the impact of legalization on youth below age 25, because research suggests that use among youth carries special risks to the developing brain that are not present for older adults.^{1,2,3} Legalization and taxation should have as a primary goal establishing a legal market while at the same time instituting policies to prevent or mitigate harm, particularly to youth. Cannabis, like alcohol and tobacco, is an addictive substance that should not be treated as an ordinary commodity in the marketplace.⁴

Current California law, based on 2016' s Proposition 64, provides only weak public health protections. In the absence of action at the local level, state law will permit a large-scale expansion of the legal cannabis industry which is already growing rapidly. Fortunately, Proposition 64 allows local governments to adopt policies that build on state law in a number of areas. This model addresses the area of taxation policy, and follows on the project' s December 2017 Model Local Retailing and Marketing Ordinance (see www.gettingitrightfromthestart.org).

The model was produced after in-depth interviews with dozens of stakeholders from local jurisdictions, community members, academic and research experts, regulators from other states, legal experts, community coalitions, dispensary owners, laboratory experts, manufacturers, clinicians working with addiction, and others. The model uses best available evidence from the fields of municipal revenue law, alcohol and tobacco control, public health, the experience of states that legalized earlier than California, and expert advice on best practices. Key challenges identified include the rapid growth of a market for high potency products, the declining popular perception of harm, evidence of clear and significant harms from use in several population groups, the extraordinary incentives to expand and diversify consumption in California given the enormity of our state' s crop and the fact that less than one-fifth is currently consumed in-state,⁵ and

the challenge of keeping marijuana-related income in low-income communities. This model ordinance seeks to address these challenges.

The basic philosophy underlying the model is that cannabis sales should be *cautiously legalized* to reduce the social harm of illegality, but that cannabis sale and consumption should not be normalized, and cannabis-related tax revenue should be reinvested in communities at greatest risk of substance abuse and poor health outcomes. These investments should seek to improve health, reduce social inequity, save health-care and other costs from substance abuse and other preventable illness, injury and premature death, and mitigate other social harms from substance abuse and incarceration. In light of lessons from the decades-long efforts to “denormalize” consumption of tobacco, consumption of cannabis should not be encouraged. It should not be viewed as the next great economic opportunity for our state. For example, daily use of cannabis by high school students was found to halve the high school graduation rate;⁶ so promoting use is not socially or economically beneficial to our communities in the long run. Proliferation of a multitude of new forms of cannabis that are potentially more harmful, such as high potency products,^{7,8,9,10,11,12} if allowed at all, can be discouraged through tax policy.¹³ Whatever economic returns this new legal industry brings should be shared by the communities that have been most affected by the war on drugs. Additionally, because local taxes must be approved by the voters in California, it asks voters to authorize tax ceilings, and leaves to local government a high degree of flexibility to adjust taxation levels over time. Given uncertainties about the future of California’s cannabis market and the need to avoid encouraging the black market, flexibility to adjust tax rates is advisable. The model is also written in such a way that it can be applied to adult-use or medical cannabis markets, or both.

The ordinary sales taxes imposed under Bradley-Burns Uniform Sales and Use Tax Law to benefit the state and local governments will apply to retail adult-use sales, but not to retail medical marijuana sales, in addition to the taxes imposed by this ordinance and the taxes the State imposes under Proposition 64. Sales and state taxes are administered

by the California Department of Tax and Fee Administration. The tax under this ordinance would be administered by the City or County adopting it, along with other local business license taxes

We are happy to speak with you to discuss the reasoning behind the model and we welcome your input. This is a living and evolving document that will grow with your local experience and emerging evidence in addressing this new challenge, so periodic updating is expected.

As occurred in tobacco regulation, we believe that innovation and leadership for best practices will bubble up from cities and counties across the nation. We look to you to provide that leadership and to share your experience.

Note to Readers

This model ordinance is not intended as legal advice. For legal advice, readers should consult an attorney licensed in their state.

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RESOLUTION NO. _____

A RESOLUTION OF THE [CITY COUNCIL/BOARD OF SUPERVISORS] OF THE [CITY/COUNTY] OF _____, CALIFORNIA, ESTABLISHING _____, 20[] AS THE DATE FOR A [GENERAL / SPECIAL] ELECTION ON A PROPOSED BALLOT MEASURE SEEKING VOTER APPROVAL OF A SPECIAL BUSINESS LICENSE TAX ON COMMERCIAL RETAIL SALE OF NONMEDICAL CANNABIS PRODUCTS IN THE [CITY/COUNTY]

WHEREAS, the [City/County] of _____ imposes license taxes upon businesses in the [City/County]; and

WHEREAS, these business license taxes are imposed to raise revenue and not for regulation; and

WHEREAS, the ordinance attached hereto as Exhibit "A" and incorporated herein by reference (the "Ordinance") would impose a business license tax on persons engaged in commercial activity involving cannabis products in the [City/County] (the "Special Tax"); and

WHEREAS, if approved by the voters, the revenues from the Special Tax will be used to fund efforts to promote health and prevent the leading causes of preventable illness, injury and premature death including, substance abuse in the [City/County] and to prevent negative social impact of drug-related incarceration; and *[or specify other uses desired by the city/county]*

WHEREAS, pursuant to Section [9222/9140] of the California Elections Code the [City Council/Board of Supervisors] may submit the Ordinance directly to the voters; and

WHEREAS, at a properly noticed meeting on _____, 20[], the [City Council/Board of Supervisors] adopted this Resolution to order a [general / special] election on the Ordinance for _____, 20[] (the "Election"), at which it will submit to the qualified voters in the [City/County], the Ordinance to impose a special tax on commercial activity involving cannabis in the [City/County].

NOW THEREFORE, BE IT RESOLVED by the [*City Council/Board of Supervisors*] of the [*City/County*] of [_____] that:

1. The [*City Council/Board of Supervisors*] hereby [calls the Election on [date]] and submits the attached Ordinance to the qualified voters of the [*City/County*] to impose a special tax on commercial activity involving cannabis products in the [*City/ unincorporated area of the County*] (the "Measure").

COMMENT: The bracketed phrase is necessary if a Special Election has not been called by another resolution. If an election has been called, this phrase should be deleted.

Revenue & Taxation Code section 34021.5(a)(4) authorizes a County to impose a County-wide tax, applicable in cities and well as unincorporated area, with approval of votes in the area to be taxed (i.e., all voters or just those in the unincorporated area). County taxes in cities are uncommon and might draw opposition from city governments which wish to guard their own tax bases. Accordingly, this model assumes the tax will apply in a city or in county unincorporated area. It can be adjusted to apply throughout a County.

2. The type, rate, and method of collection of the tax are set forth in the Ordinance, the full text of which shall be printed and made available to voters pursuant to Section [9119 / 9223] of the California Elections Code.
3. The ballot label for the proposed Measure shall be submitted for a "Yes" or "No" vote as follows:

COMMENT: The ballot label is the question printed on the ballot and the last thing voters read before casting their votes, thus it should be carefully considered. It is limited to 75 words and the Secretary of State recommends it be written at a 5th or 6th grade reading level. Elections Code section 13119 governs the ballot labels for tax measures.

[*Option 1*] **Shall an ordinance be adopted to impose a business license tax of up to [15]% of gross receipts from cannabis business and up to \$10 per square foot of grow area, to raise an estimated \$[aa] per year until voters change or repeal it, to fund efforts to prevent substance abuse and addiction,**

promote health and prevent the leading causes of illness, injury and premature death, and reduce drug related incarceration;

COMMENT: This model can be used to tax adult use cannabis, medical cannabis or both. It separately taxes cultivation from other cannabis activity, but the cultivation tax is a credit against the gross receipts taxes for businesses which cultivate and receive receipts in other ways, too.

[Option 2] **Shall an ordinance be adopted to impose a business license tax of up to [15]% of gross receipts from cannabis business, plus 1% on highly potent products, per percent of THC content above [17]%, 20% on sweetened cannabis beverages and up to [\$10] per square foot of grow area, to raise an estimated \$[aa] annually until voters change or repeal it, to fund efforts to prevent substance abuse, promote health and reduce drug-related incarceration;**

COMMENT: Option 2 adds to the base model ordinance a higher tax on high-potency products and on cannabis infused sweetened beverage (such as sodas, teas or juices) to discourage their use and sale in the City/County and to make them less likely to be used by children and youth, who typically have less purchasing power than adults.

COMMENT: Use of cannabis, especially frequent use, has significant negative health and social impacts including low birth weight, increased schizophrenia and psychoses, increased problem use and addiction, motor vehicle crashes, and respiratory disease.¹⁴ Daily use may halve high school graduation rate.¹⁵ An increasing body of literature suggests risks for heart disease.^{16,17} Effects are more severe when use starts young and is frequent, and with higher potency products.¹⁸ For this reason it is of critical importance that communities collect and reinvest cannabis taxes in large part in community based policies, programs and environmental changes to create a healthier community, promote health and prevent substance use and addiction. It is also important to prevent and mitigate social conditions and criminal justice practices that have led to high and unjustly distributed rates of drug-related incarceration with long-term negative social impact as well as expense to government. Long experience with funds from tobacco

taxation have shown that the investments in tobacco control, for example, were enormously cost-saving.¹⁹

4. The City Council requests that the Board of Supervisors [_____] County ("County") to consolidate the Election with any and all other elections to be held in the County on that date.

COMMENT: This section is needed only for City taxes and will not be needed if a City intends to conduct its own election, which is not common, except in a few very large cities.

5. The [*City/County*] Clerk is authorized and directed to file a certified copy of this Resolution with the Board of Supervisors and Chief Election Official of the County.
6. The [*City Attorney/County Counsel*] is authorized and directed to prepare an impartial analysis of the measure, as required by section [*9280/9160*] of the California Elections Code.
7. The [*Mayor/Chair of the Board of Supervisors*] is authorized to select two members of the [*City Council/Board of Supervisors*] to prepare a written argument, not to exceed 300 words, in favor of the Measure on behalf of the [*City Council/Board of Supervisors*], as specified in section [*9282/9162*] of the California Elections Code. At the discretion of the [*Mayor/Chair of the Board of Supervisors*], the argument may also be signed by members of the [*City Council/Board of Supervisors*] or citizen associations or individual voters, subject to sections [*9282 and 9283/9162 and 9164*] of the California Elections Code. If an argument is filed against the Measure, the [*Mayor/Chair of the Board of Supervisors*] is also authorized to select two members of the [*City Council/Board of Supervisors*] to prepare a written rebuttal, not to exceed 250 words, which also may be signed by members of the [*City Council/Board of Supervisors*] or citizen associations or individual voters, subject to sections [*9282 and 9283/9162 and 9164*] of the California Elections Code.

COMMENT: If multiple arguments are submitted for or against a ballot measure, the Elections Official chooses which to print based on these priorities stated in the Elections Code: members of the city council or board of supervisors authorized by their legislative body to write an argument, bona fide associations of voters, individual voters. The effect of this paragraph is to assign responsibility for the “yes” argument to designated city council members or county supervisors. This section is optional.

8. Arguments against the Measure may not exceed 300 words and must be submitted to the [City/County]' s elections official in compliance with sections [9282 and 9283/9162 and 9164] of the California Elections Code by the deadline established by the Elections Official as authorized by law.
9. Rebuttal arguments are hereby authorized and may not exceed 250 words and must be submitted to the [City/County]' s elections official as specified in section [9285/9167] of the California Elections Code.

COMMENT: Rebuttal arguments are optional and must be authorized by resolution unless the local government has a blanket authorization for them. The trade-off is that rebuttals increase printing costs but provide more information to voters. This section of the resolution is therefore an option.

10. Notice of the Election is hereby given and the [City/County] Clerk shall give such further notice of the Election as required by law.
11. The [City/County] Clerk is authorized and directed to take all other steps necessary to conduct the election on the Measure.
12. The [City Manager/County Administrative Officer] is authorized and directed to appropriate the funds necessary to fund the cost of the Election.
13. [The [City Council/Board of Supervisors] hereby declares, by a unanimous vote of those present, that the [City/County] is experiencing a fiscal emergency which justifies a general election on a special tax, as authorized by California Constitution, article XIII C, section 2, subdivision (b). The facts which demonstrate the fiscal emergency are: [insert local fiscal conditions on which the emergency declaration rests here].]

COMMENT: This section is required only if the general tax is placed on a special election ballot. If a general tax is placed on a general election ballot or if the tax is proposed by initiative petition rather than by a city council or board of supervisors, this section is not needed. A general tax is one that can be used for any lawful purpose of the agency; a special tax is one that may be spent only for stated purposes. A separate model of such an ordinance is being developed. This model is a special tax and limits how the proceeds of the tax can be used.

The *[City Council/Board of Supervisors]* of the *[City/County]* of _____ duly adopted this Resolution at a meeting held on _____, 20____, by the following vote:

AYES: _____ *[Council Members/Supervisors]:*

NOES: _____ *[Council Members/Supervisors]:*

ABSTAIN: _____ *[Council Members/Supervisors]:*

ABSENT: _____ *[Council Members/Supervisors]:*

[Mayor/Chair of the Board of Supervisors]

ATTEST:

[City/County] Clerk

State of California }

County of _____ :ss.

City of _____ }

I certify that the foregoing is a true copy of Resolution No. _____, which was passed and adopted by the [City Council/Board of Supervisors] of the [City/County] of _____ at its regular/special meeting held on _____, 20__.

[City/County] Clerk

Model Special Tax Ordinance

The [City Council/Board of Supervisors] of the [City/County] of [_____] does ordain as follows:

--or--

Be it ordained by the people of the [City/County] of [_____]:

SECTION I. Title

This measure shall be known, cited and referred to as the "Cannabis Business Tax" measure.

SECTION II. Findings.

WHEREAS, the [City Council/Board of Supervisors] has decided to allow the cannabis industry to operate legally in [City/County], it is important to ensure that legalization occurs so as to protect and promote the health, safety, and welfare of our youth and most vulnerable residents; and

WHEREAS, the National Academies of Science, Engineering and Medicine note that the growing acceptance, accessibility, and use of cannabis and its derivatives have raised important public health concerns, while the lack of aggregated knowledge of cannabis-related health effects has led to uncertainty about the impact of its use;²⁰ and

WHEREAS, 22.2 million Americans ages 12 and older reported using cannabis in the past 30 days, and 90 percent of adult cannabis users in the United States said their primary use is recreational; and between 2002 and 2015, the percentage of past-month cannabis users in the U.S. population ages 12 and older increased steadily from 6.2 percent to 8.3 percent;²¹ and

WHEREAS the perception of risk from cannabis consumption has been falling steadily, dropping from 58.3% to 31.1% among youth nationally between 2000 and 2016;²² and

WHEREAS use during pregnancy has risen substantially between 2000 and 2016,^{23,24} increasing the risk of low birth weight;²⁵ and

WHEREAS, in 2011–2012 surveys, over 40 percent of 11th grade students in California stated they had ever used cannabis, a number far exceeding that for tobacco;²⁶ and

WHEREAS, despite the State' s and [City/County]' s efforts to limit youth access to cannabis, minors are still able to access cannabis, as evidenced by the fact that [*insert local data*]:

COMMENT: We recommend inserting further City/County-specific findings regarding the number of local high school students who use cannabis or cannabis products, youth perception of ease of accessibility of cannabis, and/or young adults who use cannabis or cannabis products. Data for individual counties and districts can be found at kidsdata.org under the topic "Emotional & Behavioral Health," and the subtopic "Youth, Alcohol, Tobacco & Other Drug Use."

WHEREAS, in 2017, the National Academies of Sciences, Engineering and Medicine (NASEM) reviewed the available scientific evidence on the health effects of cannabis and cannabis-derived products, and while noting substantial evidence of therapeutic effectiveness of medicinal cannabis for a limited number of indications, noted evidence of association of cannabis use with harm in a wide range of areas.²⁷ The NASEM study found "substantial evidence" to support the following conclusions:

- a) Initiation of use at an earlier age or more frequent use is a risk factor for the development of problem cannabis use;
- b) Maternal cannabis smoking during pregnancy is associated with low birth weight;
- c) Cannabis use is associated with increased risk of motor vehicle crashes;

- d) Cannabis use increases the risk of development of schizophrenia and other psychoses, with the highest risk among the most frequent users;
- e) Long-term cannabis smoking is associated with worse respiratory symptoms and more frequent chronic bronchitis episodes; and
- f) Increases in cannabis use frequency are associated with developing problem cannabis use.

The NASEM study found that less conclusive, but still worrisome, emerging evidence exists for a wide range of other harms, including impaired academic achievement and educational outcomes, development of substance use disorders, suicide completion, high blood pressure and increased unemployment, among others; and

WHEREAS, the findings of the NASEM review and other scientific literature lead us to conclude that legalization of recreational cannabis should be carried out cautiously, so as to prevent undue exposure of youth and expansion of problem use; that unfettered expansion and production of high potency products are not prudent; and that, like tobacco and alcohol, cannabis use poses significant risks to public health, especially when initiated early; and

WHEREAS, cannabis prices have been shown to fall significantly post-legalization²⁸ and, given price elasticity of demand for any product, this will lead to increased consumption. Median price per gram for cannabis flower fell from \$25 to \$10 between August 2014 and September 2016 in Washington State;²⁹ and

WHEREAS, while prices of legal cannabis should not be so high as to promote illegal sales, they should also not be excessively low as to promote excessive use and youth access; and

WHEREAS, research demonstrates that youth are particularly price sensitive and responsive to changes in price,³⁰ low prices are known to facilitate use of tobacco by minors³¹ — when cigarettes cost more, fewer adolescents start smoking,³² and similar findings are expected for cannabis; and

WHEREAS, high-potency cannabis products have additional health risks³³ and their sales and consumption have expanded markedly over recent years³⁴ and post-legalization.

WHEREAS, in 2016 Canada' s federal task force report encouraged the use of tax schemes to discourage high-potency cannabis products;³⁵ and

WHEREAS, the market share of flower with more than 20% THC has increased by 48.4% since October 2014, now accounting for 56.5% of retail expenditures on cannabis flower post-legalization in Washington state,³⁶ to such an extent that the products originally understood by voters to be "marijuana" intended for legalization are no longer the products being sold.

WHEREAS, the potency of flower marijuana has increased several fold from roughly 4% years ago,³⁷ and many strains now exceed 20% of the main active ingredient tetrahydrocannabinol (THC), and carry a higher likelihood of inducing psychoses;³⁸ and

WHEREAS, in California, youth were estimated to consume 47% of the alcopops (sweetened, fruit-flavored alcoholic beverages) sold in the state in 2007,³⁹ and nationwide, minors are twice as likely to consume "alcopops" as are adults;⁴⁰ and similar findings are expected for cannabis infused sweetened flavored beverages; and

WHEREAS, key federal funding to support community based prevention efforts was severely reduced in December 2017 by HR 1370; and

WHEREAS, programs funded by cannabis business license taxes can help to prevent excessive use of cannabis, opiate addiction and other substance use, prevent the leading causes of illness, injury and premature death, promote wellness and more equitable health conditions and reduced incarceration rates in our community; and

WHEREAS this ordinance proposes the creation of a Community Advisory Board to ensure community participation and advise the [City Council/Board of Supervisors] on the funding of community-based actions to mitigate harm from the cannabis industry and from longstanding poor health conditions in parts of our community, to prevent the leading causes of illness, injury and premature death, including, but not limited to substance abuse and addiction, promote wellness and improve health equity; and

NOW, THEREFORE, THE PEOPLE OF THE [CITY/COUNTY OF ____] DO HEREBY
ORDAIN AS FOLLOWS:

**SECTION III. Article [xxx] of the [Municipal/County] Code is hereby
amended to add a new Chapter [XX] to read as follows:**

CHAPTER XX CANNABIS BUSINESS TAXES

Sec. [XX.010]. Statement of Purpose.

This ordinance is adopted to achieve the following purposes, among others, and shall be interpreted to accomplish those purposes:

- A. To impose a tax on the privilege of cultivating, transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, donating, selling, or distributing cannabis or cannabis products by commercial cannabis businesses in the [City/unincorporated area of the County], pursuant to the state Medicinal and Adult-Use Cannabis Regulation and Safety Act, California Business and Professions Code section 26000, Proposition 64, approved by the voters in November 2016 and as amended to date ("MAUCRSA"), which legalized and regulates recreational cannabis in California, and other applicable law as it now exists or may hereafter be adopted;
- B. To dedicate [suggested: of at least 70%] the proceeds of the taxes imposed by this ordinance to fund community-based prevention of the leading causes of illness, injury, and premature death including, but not limited to substance abuse and addiction, promote wellness and to reduce inequity in health conditions whether or not arising from cannabis use;
- C. To dedicate the remaining proceeds of the taxes to fund other community needs to mitigate negative social impact of substance abuse and reduce incarceration, including support to diversion programs to reduce new drug-related incarceration, programs to assist residents in expungement or reclassification of records of marijuana convictions allowable pursuant to MAUCRSA, re-entry programs for those released from incarceration to avoid recidivism, job training

programs and other community-based and educational programs, especially those which can help minimize substance-abuse related incarceration;

- D. To specify the type of tax and rate of tax to be levied and the method of collection; and
- E. To comply with all requirements for imposition of a special tax.

This chapter is enacted solely to raise revenue for stated purposes and not for regulation. It shall apply to all persons engaged in cannabis business in the [City/unincorporated area of the County]. The tax imposed by this chapter is a special tax under Article XIII C of the California Constitution.

This chapter does not authorize the conduct of any business or activity in the [City/unincorporated area of the County], but provides for the taxation of such businesses or activities as they occur.

Sec. [XX.020]. Definitions.

The following definitions shall apply to this chapter:

- A. **"Cannabis"** or **"marijuana"** means all parts of the plant *Cannabis sativa* *Linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds of such plants. "Cannabis" also means cannabis as defined by Business and Professions Code section 26001, subdivision (f), the Health and Safety Code section 11018, and by other state law.
- B. **"Cannabis accessory"** is any device intended to aid in the use of cannabis or cannabis products which does not itself consist in all or part of cannabis or cannabis products and includes "cannabis products" as defined in Health and Safety Code section 11018.2 and by other state law.

- C. **"Cannabis business"** means the activity of any natural or legal person, business, or collective in the [*City/unincorporated area 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.
- D. **"Cannabis cultivation area"** means the total aggregate area(s) of cannabis cultivation on one or more parcels in the [*City/unincorporated area of the County*] by a cannabis business as measured around the outermost perimeter of each separate and discrete area of cannabis cultivation at the dripline of the canopy expected at maturity and includes, but is not limited to, space between plants within a cultivation area, the exterior dimensions of garden beds, garden plots, hoop houses, green houses, and each room or area where cannabis plants are grown, as determined by the [*City Manager/County Administrative Officer*].
- E. **"Cannabis product"** means any product containing cannabis or its derivatives, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles and products described in Section 11018.1 of the Health and Safety Code.
- F. **"Canopy"** means the designated area(s) at a licensed premises that will contain mature plants at any time. If mature plants are cultivated using a shelving system, the surface area of each level shall be included when calculating canopy area. Canopy area shall be expressed in square feet and measured using clearly identifiable boundaries of all areas that will contain mature plants at any time, including the entire area with those boundaries. Canopy may be noncontiguous,

but each noncontiguous area shall be defined by an identifiable boundary such as an interior wall or by 10 feet or more feet of open space.

- G. **"Commercial cannabis cultivation"** means cultivation conducted by, for, or as part of a cannabis business. Commercial cannabis cultivation does not include personal medical cannabis cultivation, or cultivation for personal recreational use as authorized by the MAUCRSA, including Health & Safety Code section 11362.1 et seq., for which the individual receives no compensation whatsoever.
- H. **"Cultivation"** means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- I. **"Delivery"** means the transfer for any form of compensation of cannabis or cannabis products to a customer or caregiver at a location that is not a dispensary.
- J. **"Dispensary"** means a place at which cannabis, cannabis products, or accessories for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that engages in delivery.
- K. **"Distributor"** means a person engaged in procuring cannabis and/or cannabis products for sale to a dispensary or other point of retail sale. **"Distribution"** means engaging in that conduct and a **"distribution facility"** is any real estate, whether or not improved, used in such conduct.
- L. Except as otherwise specifically provided in this code or by regulation authorized by this code, **"gross receipts"** means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature, for which a charge is made 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; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. **"Gross**

receipts” shall include all receipts, cash, credits and property of any kind or nature, without any deduction 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.

- M. **“High potency”** cannabis or cannabis product means cannabis flower containing more than 17% tetrahydrocannabinol (THC), or a cannabis product containing more than 50% THC, excluding edibles containing ten 10 mg or less of THC per dose.
- N. **“Manufacturer”** means a person who engages in the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
- O. **“Sweetened cannabis beverage”** is a liquid cannabis product containing natural or artificial sweeteners sold in units intended for consumption exceeding one ounce.

Sec. [XX.030]. Cannabis Business Tax.

COMMENT: Cities and counties have a wide range of options for taxing commercial cannabis activity. So long as they do not impose a sales tax (which is preempted), interfere with the State’ s taxes, or violate other general restrictions on taxation (like taxing activity outside their boundaries, imposing taxes so high as to be “confiscatory” or make distinctions between taxpayers that are completely irrational or discriminate on the basis of a protected class (such as race, gender, religion, etc.), taxes can vary widely. This model suggests these options: (i) a gross receipts tax on all cannabis businesses (paragraph A. below), (ii) a tax on highly potent products and sweetened cannabis beverages (the cannabis analog to alcopops, which appeal to young people and are likely to be disproportionately consumed by youth) (paragraph B. below), and (iii) a tax on cultivation (paragraph C.) below. A jurisdiction could adopt some or all of these and might consider other tax distinctions which serve its local policy goals. Given the public health objectives of this ordinance, its framers recommend consideration of the high-potency and sweetened beverages taxes. Such taxes may steer users towards safer products and may help them focus on the risks of high potency products.

- A. [Option 1] There is hereby imposed on every cannabis business in the [City/unincorporated area of the County] an annual maximum cannabis industry tax of [fifteen] percent (15%) of the gross receipts, plus the amount of any tax paid under paragraph B of this section and less the amount of any tax paid under paragraph C of this section.

COMMENT: We recommend a gross receipts tax because sales taxes are preempted by the Bradley-Burns Uniform Local Sales and Use Tax. Practically, consumers may not see much difference, they may see an amount on their purchase receipts listing the tax and may not think of it any differently than a sales tax. There is an important technical, legal difference, though. A business license tax is an excise tax (a tax on the privilege of doing something) on those who do business in a community. Such taxes are commonly, but not always, based on gross receipts.

This language will authorize the jurisdiction to levy gross receipts taxes of up to 15% without returning to the voters. However, taxes can start lower and be raised as the price of cannabis begins to fall post legalization, which is what has happened in other states, until attaining the limit. As time passes and legalization consolidates, the cannabis tax should be used more like a tobacco tax, with the goal of reducing initiation of use and consumption, especially youth consumption, while raising revenue for prevention measures which are generally highly cost-effective. This model can be applied to adult use cannabis, medical cannabis or both. Cities and counties can adjust the tax differently across sectors or products depending on community priorities.

- B. [Option 2] In addition, there is hereby imposed on every cannabis business in the [City/unincorporated area of the County]:
- a. an additional tax of up to one percent (1%) of the gross receipts from high potency cannabis and each high potency cannabis product cultivated, manufactured or sold by the taxpayer, multiplied by the percent of tetrahydrocannabinol (THC) content of the product above 17%; and,
 - b. an additional tax of 20% of gross receipts from sweetened cannabis beverages.

By way of illustration, and without limitation, a retailer who sells a cannabis product with 70% THC content earning gross receipts of \$1,000 will pay a \$530 tax under this paragraph B (70% minus 17% = 53% times \$1,000 = \$530) in addition to the tax imposed under paragraph A and a grower who sells high

potency cannabis flower with 28% THC content, generating gross receipts of \$1,000 will pay a tax of \$110 (28% minus 17% = 11% times \$1,000 = \$110), in addition to the tax imposed under paragraph A.

COMMENT: This option is not a complete alternative to paragraph A, but an optional addition to it.

In the 1960s and 70s, marijuana flower had about 4% THC, but potency has greatly increased and today is between about 16 and 28% in stores with the higher potencies associated with more negative effects.⁴¹ Commercial extracts fall mostly in middle ranges but some very high potency products, such as shatter for “dabbing” (vaporizing highly concentrated cannabis by placing it on a heated “nail” and inhaling intensely) are over 90% THC. If a jurisdiction prohibits sale of very high potency products, as proposed in the Model Local Ordinance for Cannabis Retailing and Marketing, then this higher tax on retail sale of high potency products above 50% THC, or flower above 20% (those suggested not to be allowed for sale) will not be used, but would still be applied for flower between 17% and 20%. If their sale is allowed, then we recommend adopting higher rates for high potency products [Option 2] immediately to discourage their cultivation, manufacturing and consumption.

Similarly, cannabis manufacturers and retailers may be seeking to attract youth by marketing “cannapops” similar to “alcopops,” and mimicking already unhealthy common sugar-sweetened beverages like orange soda, heavily consumed by youth. Because of the documented attraction of such products to youth, we recommend not allowing their sale, or if allowed, imposing a higher taxation rate.

- C. There is hereby imposed on every cannabis business engaged in commercial cannabis cultivation in the [City/unincorporated area of the County], an annual tax in an amount established from time to time by resolution of the [City Council/Board of Supervisors] which does not exceed either [ten] dollars [\$10] per square foot of cannabis cultivation area or fraction thereof. The maximum square foot tax shall be adjusted annually (and rounded to the nearest cent) each January 1st based on the year-over-year percentage change in Bureau of Labor Statistics [region] Consumer Price Index – All Urban Consumers (CPI-U) October to October comparison, or if such index is discontinued, a comparable or successor consumer price index designated by the [City Council/Board of Supervisors]. The tax shall be due and payable in monthly installments.

COMMENT: The U.S. Department of Labor’s Bureau of Labor Statistics publishes a number of consumer price indices. It updates the Los Angeles index month, the San Francisco bimonthly and the San Diego index every six months. It also provides a monthly index for the Western United States. A city or county might choose one of these indices to adjust the cultivation tax for inflation.

- D. The [City Council/Board of Supervisors] may by resolution, in its discretion, implement tax rates lower than the maximum rates established in subsections (A) through (C) of this section for all persons engaged in a cannabis business in the [City/unincorporated area of the County], including establishing different tax rates for different categories of cannabis business, including for medical versus adult recreational use or for products of different potencies. The [City Council/Board of Supervisors] 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, exceed the maximum tax rates established in subsections (A) through (C) of this section.

COMMENT: In general we recommend using a maximum tax rate that does not impede the transfer to the legal market. It appears likely given that California’s supply far outstrips in-state demand that taxation will not be the main determinant of shift to the legal market, although the cannabis industry may so claim. A fall in prices in Washington post-legalization occurred despite taxation and greatly exceeded the magnitude of the tax. Supply in Washington, for example, is also estimated to be increasing by 60% in 2017 over 2016, further lowering prices in the legal market.⁴²

Sec. [XX.040]. 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/County Administrative Officer’s] office by the later of:
1. 30 days after commencing operation or
 2. January 1, 20[XX] and shall annually renew such registration on or before the anniversary of the initial registration for that business.

- B. Registrants shall furnish to the [*City Manager/County Administrative Officer*] a statement sworn under penalty of perjury, upon a form provided by the [*City Manager/County Administrative Officer*], setting forth:
1. Every name under which the business engages in commercial cannabis activity in the [*City/unincorporated area of the County*];
 2. The names and addresses of every person who is an owner, principal or manager of the business;
 3. The nature or kind of all business activity to be conducted;
 4. The place or places whether or not in the [*City/unincorporated area of the County*] where such business is to be conducted; and
 5. Any further information which the [*City Manager/County Administrative Officer*] may require.

COMMENT: Creating an additional registration mechanism is optional and may be unnecessary for those cannabis businesses for which cities or counties require registration via a land use or other regulatory ordinance. This provisions allows registration on the later of 30 days after starting business or the start of a year to be determined when the tax is adopted. The deadline will be clear and mandatory either way. It is not an option for the business. The purpose for asking where the business operates outside the City or County is not to regulate or tax its activity there, but to allow the taxing jurisdiction to ensure the taxpayer accurately reports commercial activity in the taxing jurisdiction.

- C. Registrants shall pay an annual registration fee in an amount established from time to time by resolution of the [*City Council/Board of Supervisors*] to recover the [*City/County*]' s costs to implement the registration requirement of this section, and the other provisions of this chapter other than the duty to pay tax when due. As a regulatory fee, such fee shall be limited to the [*City/County*]' s reasonable costs for those activities. The [*Finance Director*] may provide by a regulation adopted pursuant to section XX.120 of this chapter for waivers of the annual registration fee for one or more years for any class of cannabis businesses if such a waiver will facilitate elimination of the illegal market in cannabis in the [*City/unincorporated area of the County*] or to facilitate participation in the cannabis market by low-income persons.]

COMMENT: This section requires cannabis businesses to register with the City or County and to provide information to be used in enforcing the tax. That information may also be required under a zoning ordinance or another ordinance of the City or County regulating cannabis businesses and, if so, this optional section can be deleted. If not, we recommend including it as it will produce information useful in enforcing the tax and, perhaps, other City or County regulations of cannabis business activity.

The last sentence, allowing waivers of registration fees by rule, is intended to overcome resistance of some black-market businesses to coming into the legal market, by lowering their cost to do so. The Model Ordinance for Local Cannabis Retailing and Marketing in California, based on work in Oakland and Sacramento, recommends the creation of a class of *equity applicants* for cannabis business permits, to encourage maintaining revenue from the cannabis industry in low-income communities (see www.gettingitrightfromthestart.org). If your jurisdiction adopts such a measure, we recommend waiving or deferring registration fees for the first year for those businesses. This ordinance refers to “low-income persons” to avoid identifying the benefited population on the basis of race or where they live. The first may violate Proposition 209, which forbids affirmative action by California governments, and the second may violate the “right to travel” under the State and federal Constitutions.

The fee cannot recover the cost of collecting the tax itself as the Court of Appeal has concluded that a fee to fund enforcement of a tax is itself a tax.

Sec. [XX.050]. Payment Obligation.

All persons subject to a tax under 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/County] may use any or all other code enforcement remedies available at law or in equity to enforce this chapter. 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.

Sec. [XX.060]. 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. Nothing in this chapter shall be applied or construed as authorizing the sale of cannabis.

Sec. [XX.070]. Cannabis Tax Is Not a Sales Tax.

The tax imposed by this chapter is upon the privilege of conducting business within the [City/unincorporated area of the County]. It is not a sales tax or use tax.

COMMENT: This ordinance assumes the tax will apply in a city or in the unincorporated area of a county, Revenue & Taxation Code section 34021.5(a)(4) allows a county to impose a county-wide tax with the approval of the County-wide electorate. City opposition to such a tax might well persuade voters to reject it, however, and counties may therefore wish to consult with cities, especially as to the use of tax revenues, before proposing a county tax to be collected within cities. This ordinance can be easily adapted to serve as a county-wide tax if one is desired.

Sec. [XX.080]. Returns and Remittances.

The Tax shall be due and payable as follows:

- A. Each person owing tax under this chapter shall provide a tax return to the [City Manager/County Administrative Officer] on or before the last business day of each month stating the tax owed for the preceding month and the basis of its calculation. The taxpayer shall remit the tax owed to the [City Manager/County Administrative Officer] when the return is due whether or not a return is filed as required.
- B. All tax returns shall be completed on forms provided by the [City Manager/County Administrative Officer].
- C. Tax returns and payments for all outstanding taxes, fees, penalties and interest owed the [City/County] are immediately due upon cessation of business for any reason.
- D. Whenever any payment, statement, report, request or other communication is received by the [City Manager/County Administrative Officer] 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/County Administrative Officer*] shall regard such payment, statement, report, request, or other communication as timely. If the due date falls on Friday, Saturday, Sunday, or a day when [*City/County*] offices are not open for business, the due date shall be the last business day before that due date.

- E. Unless otherwise specifically provided by this chapter, the taxes imposed by this chapter shall be delinquent if not paid on or before the due date specified in subsection A of this section.
- F. The [*City Manager/County Administrative Officer*] 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.

Sec. [XX.090]. Use of Proceeds; Audits.

- A. The proceeds of the tax imposed by Section [XX.030] shall be deposited in a special account to fund the purposes stated in Section [XX.010] in the percentages provided there.
- B. The [*Finance Director*] shall arrange for an annual independent audit of the receipts and expenditures of the special account, and the status of any project funded by that account, in compliance with California Government Code Section 50075.3. He or she shall share that audit report with the [*City Council/Board of Supervisors*] and make it available for public inspection.
- C. [*Counties only or cities with health departments:* Expenditures from the special account shall be managed by the [*County Department of Public Health*].]

Sec. [XX.100]. Special Tax Community Advisory Board

- A. The [*City Council/Board of Supervisors*] shall establish a Special Tax Community Advisory Board of nine residents of the [*City/County unincorporated area*] to

recommend priorities for funding, make annual recommendations on the spending of tax proceeds under this chapter, recommend appropriate efforts to evaluate previous expenditures, and to review the annual report and related records and to make such other comments and other recommendations as the [City Council/Board of Supervisors] may request to ensure compliance with this Chapter. Spending decisions shall remain with the [City Council/Board of Supervisors] which may choose not to accept any particular recommendation of the Special Tax Community Advisory Board.

1. The Board shall have at least one public health professional, one expert in addiction or substance use prevention and treatment, one physician, a representative of a community based organization, a representative of community clinics, a school nurse or school-based mental health professional, a representative of a community based organization serving low income people, the county health officer or his or her designee. At least two members shall be residents of communities disproportionately affected by drug-related incarceration.

COMMENT: These criteria will be workable for large cities and urban counties. Rural counties and smaller cities should consider whether all of these skill sets are available in their communities in sufficient numbers that the commission can be staffed over time and adjust as needed.

2. Members shall serve four-year terms. No member shall serve more than 2 consecutive four-year terms. The initial four-year term shall commence when the first 6 members have been appointed.
3. Presence of 5 members shall constitute a quorum.
4. Unexcused absence from three consecutive meetings or from four meetings during a calendar year shall constitute resignation from the Board.
5. Members of the Board shall be subject to all applicable conflicts of interest provisions under local and state law. No person employed in the cannabis industry, or who has an economic interest in that industry which would be required to be reported on an annual statement of economic interests (Form 700) under the Political Reform Act shall serve on the Board.

6. Members of the Board shall serve without pay.
7. The Board shall meet at least quarterly.
8. The [*City Manager/County Health Department*] shall provide clerical assistance and administrative and technical support to the Board. All [*City/County*] agencies, departments, boards and commissions shall reasonably assist and cooperate with the work of the Board as directed by the [*City Manager/County Administrative Officer*].

COMMENT: The cannabis industry is excluded from the community advisory board because the board will have to make recommendations on funding for community measures to reduce substance abuse and to educate community members. This may necessarily include, for example, educating the public on harms associated with cannabis use. The presence of the industry would therefore constitute a conflict of interest in relation to reducing risks of substance abuse.

- B. The Board shall advise and make recommendations on how to best to spend funds subject to section XX.010 B of this chapter to the [*City Council/Board of Supervisors*]:
 1. Prevent cannabis consumption by youth, during pregnancy or in excessive or harmful ways;
 2. Prevent other forms of substance abuse or addiction;
 3. Prevent other leading causes of illness, injury and premature death in the community whether or not arising from cannabis use; and/or
 4. Promote wellness and reduce inequity in health conditions.
- C. The Board shall advise and make recommendations on how to best to spend funds subject to section XX.010 C. of this chapter to the [*City Council/Board of Supervisors*] to meet other specified priorities to reduce negative social impact of substance abuse and reduce incarceration, including:
 1. Support to diversion programs to reduce new drug-related incarceration;
 2. Programs to assist residents in expungement or reclassification of records of marijuana convictions allowable pursuant to MAUCRSA;
 3. Re-entry programs for those released from incarceration to avoid recidivism;

4. Job training programs and other community-based and educational programs, especially those which will minimize drug-related incarceration.
- D. Funded activities may include promoting or implementing policy, systems or environmental changes to create a healthier community or to reduce drug-related incarceration, providing education, or community-based programs serving residents of the [City/unincorporated area of the County] with a focus on low-income communities.

Sec. [XX.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. 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/County], such amount shall be refunded to the person who paid the tax upon a timely written claim for refund filed with the [City manager/County administrative officer].
- E. The [City manager/County administrative officer] 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/County] shall be refunded to the claimant in full upon a timely claim. If an error is attributable to the claimant, the [City/County] may retain an amount established by resolution of the [City Council/ Board of Supervisors] from time to time in an

amount sufficient to recover the [City/County]' s cost to process the claim and refund the balance.

Sec. [XX.120] Administration of the Tax

- A. It shall be the duty of the [Finance Director] to collect the taxes, penalties, fees, and perform the duties required by this chapter.
- B. The [Finance Director] may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent, and terms of this chapter as he or she deems necessary to implement or clarify it to or aid in its enforcement. He or she shall give notice of those regulations as required for ordinances of the [City Council/Board of Supervisors] and such regulations shall take effect upon such notice unless otherwise provided by a particular regulation.
- C. The City Treasurer may take such administrative actions as needed to administer the tax, including but not limited to:
 - 1. Provide information to any taxpayer concerning this chapter;
 - 2. Receive and record all taxes remitted to the [City/County] as provided in this chapter;
 - 3. Maintain records of taxpayer reports and taxes collected pursuant to this chapter;
 - 4. Assess penalties and interest to taxpayers pursuant to this chapter;
 - 5. Determine amounts owed and enforce collection pursuant to this chapter; and
 - 6. Take such other reasonable steps as he or she deems necessary and appropriate to enforce this chapter.

Sec. [XX.130] Consistency with Business License Tax

The [City Council/Board of Supervisors/People] of the [City/County] of _____ intend this chapter to be enforced consistently with [article/chapter] of this Code and any rule or regulation promulgated under that [article/chapter] except as expressly provided to the contrary in this chapter.

COMMENT: This is a reference to the general business license tax of the City or County.

Sec. [XX.140] Constitutionality and Legality; Not a Sales Tax; Gann Limit

- A. This tax is intended to be applied consistently with the United States and California Constitutions, state law [*and the City Charter*]. The tax shall not be applied so as to cause an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California, or a violation of any other provision of applicable law.
- B. The taxes imposed under this chapter are excises on the privilege of engaging in commercial cannabis activity in the [*City/unincorporated area of the County*]. It is not a sales or use tax and shall not be calculated or assessed as such. Nevertheless, at the option of a commercial cannabis business, the tax may be separately identified on invoices, receipts and other evidences of transactions.
- C. [Pursuant to California Constitution, article XIII B, the appropriation limit for the [*City/County*] is hereby increased to the maximum extent over the maximum period of time allowed under law by the amount of the revenues generated by the tax.]

COMMENT: This section references a city' s or county' s Gann limit and may not be needed, but will do no harm if it is not. If it is needed, it will be essential.

SECTION IV. Amendment

To the extent allowed under Article XIII C of the California Constitution, this Ordinance may be amended by the [*City Council/Board of Supervisors*] without a vote of the people, except that voter approval shall be required for any amendment which:

- A. Increases the tax, within the meaning of Government Code section 53750(h), beyond the levels authorized by this chapter;

- B. Reduces the tax rate below:
1. [~~x~~] percent (x%) of gross receipts,
 2. \$y per square foot of cultivation, or
 3. [~~z~~] percent (z%) of retail sales of high-potency products, or
- Significantly reduces the base of business activity subject to tax; or
- C. Substantively changes the statement of purpose in section [XX.010].

SECTION V. Severability

If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this Ordinance shall nonetheless remain in full force and effect. The [*City Council/Board of Supervisors/People*] of the [*City/County*] of [_____] hereby declare [*it/they*] would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

SECTION VI. California Environmental Quality Act Requirements

This Ordinance is exempt from the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 *et seq.*, because it can be seen with certainty that there is no possibility that the enactment of this Ordinance would have a significant effect on the environment (Pub. Resources Code § 21065; CEQA Guidelines §§ 15378(b)(4), 15061(b)(3)) and because the Ordinance involves the approval of government revenues to fund existing services (Pub. Resources Code § 21080, subd. (b)(8); CEQA Guidelines § 15273(a)(4)). It does not make any commercial activity lawful nor commit the [*City/County*] to fund any particular activity.

SECTION VII. Effective Date

This Ordinance shall take effect 10 days after the certification of its approval by the voters at the Election pursuant to Elections Code section [9217/9122].

COMMENT: 10 days after certification of election result is the soonest a ballot measure may take effect. It may make sense to delay the effective date to the start of a month or quarter to facilitate administration of the tax and to give taxpayers time to comply.

SECTION VIII. Certification; Publication

Upon approval by the voters, the [*City Clerk/Clerk of the Board of Supervisors*] shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

* * * * *

It is hereby certified that this Ordinance was duly adopted by the voters at the [date] Election and took effect 10 days following adoption of a resolution declaring the results of the election at a regular meeting of the [*City Council/Board of Supervisors*] held on [date] by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: [NAME]

[CITY CLERK / CLERK OF THE BOARD OF SUPERVISORS]

[CITY / COUNTY] OF _____

BY: _____

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