

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA,
AMENDING TITLE 3 “REVENUE AND FINANCE” OF “THE CODE
OF THE CITY OF SANTA CLARA, CALIFORNIA” TO ADD A NEW
CHAPTER 3.60 ENTITLED “CANNABIS BUSINESS TAX”**

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the passage of Proposition 64, the Adult Use of Marijuana Act (AUMA), on November 8, 2016, legalized personal recreational use of cannabis and cannabis products by persons 21 and over, and regulated commercial activities related to cannabis;

WHEREAS, the State legislature then passed Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), unifying regulations on medical and non-medical commercial cannabis activities and the personal use of cannabis;

WHEREAS, both Proposition 64 and MAUCRSA allow for Cities to enact regulations related to commercial cannabis activities and to impose local taxes on same;

WHEREAS, in November 2017, the City Council passed and adopted Ordinance No. 1973 amending Chapter 18.102 of the Code of the City of Santa Clara (“SCCC”) to temporarily ban all commercial cannabis activities until January 1, 2019, such that a regulatory and taxation scheme for such commercial activity could be studied and developed;

WHEREAS, the City Council has determined that enacting, implementing, and maintaining a new regulatory scheme overseeing commercial cannabis activities, including enforcement of such a scheme, has significant cost implications for the City’s general fund which cannot be matched by revenue from the City’s existing general business tax ordinance; and

WHEREAS, the Cannabis Business Tax was approved by the voters of the City of Santa Clara on November 6, 2018.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA, AS FOLLOWS:

SECTION 1: That a new Chapter 3.60 (“Cannabis Business Tax”) is added to Title 3 (“Revenue and

Finance”) of “The Code of the City of Santa Clara, California” (“SCCC”) as follows:

“Chapter 3.60

Cannabis Business Tax

Sections:

- 3.60.010 Title.
- 3.60.020 General tax.
- 3.60.030 Purpose.
- 3.60.040 Intent.
- 3.60.050 Cannabis-related definitions.
- 3.60.060 Tax imposed.
- 3.60.070 Reporting and remittance of tax.
- 3.60.080 Delinquencies.
- 3.60.090 Penalties and interest.
- 3.60.100 Action to collect.
- 3.60.110 Appeal process.
- 3.60.120 Refunds.
- 3.60.130 Administration.
- 3.60.140 Audit and examination of records.
- 3.60.150 Payment of tax does not authorize unlawful business or activity.
- 3.60.160 Other Licenses, Permits, Taxes, Fees or Charges
- 3.60.170 Severability.
- 3.60.180 Modification, amendment or repeal.

3.60.010 Title.

This chapter shall be known as the Cannabis Business Tax.

3.60.020 General Tax.

The cannabis business tax is a general tax and not for specific purposes. All the proceeds from the tax imposed by this Chapter shall be placed in the City’s general fund to be used for any legal municipal purpose. The Cannabis Business Tax set forth in this chapter is not a sales and use tax, a tax upon income, or a tax upon real property

3.60.030 Purpose

- A. To impose a tax on the privilege of cultivation, manufacturing, processing, storage, laboratory testing, labeling, packaging, transportation, distribution, delivery, and/or sale of commercial cannabis and cannabis products and accessories by cannabis businesses in the City of Santa Clara, in accordance with State law.

- B. To specify the type of tax and rate of tax to be levied and the method of collection.
- C. To comply with all requirements for imposition of a general tax, such tax to become operative only if submitted to the electorate and approved by a majority vote of the voters voting in an election on the issue.

3.60.040 Intent.

The intent of this Ordinance is to levy a tax on all cannabis businesses that operate in the City. Nothing in this Ordinance shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

3.60.050 Definitions

The following definitions shall apply to this chapter:

- A. "Business" shall include all activities engaged in or caused to be engaged in within the City, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.
- B. "Calendar year" means January 1st through December 31st, inclusive.
- C. "Cannabis" means all parts of the Cannabis sativa Linnaeus, Cannabis Indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code and is not limited to medicinal cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable

of germination. For the purpose of this chapter, "cannabis" does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

- D. "Cannabis accessory" is any device intended to aid in the use of or consumption of Cannabis or Cannabis product, but which does not itself consist in all or part of cannabis or cannabis product.
- E. "Cannabis product" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. "Cannabis product" also means marijuana products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medicinal cannabis products.
- F. "Cannabis business" means any commercial business activity relating to cannabis, regardless of whether or not the activity is conducted for profit, including but not limited to cultivating, manufacturing, processing, storing, laboratory testing, labeling, packaging, transporting, distributing, delivering or sale of adult-use and medicinal cannabis or cannabis product, except as related to Business and Professions Code Section 19319, and as they may be amended or Health and Safety Code Sections 11362.1 through 11362.45.
- G. "Cannabis cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- H. "Cannabis distribution" means the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to the Medical and Adult Use of Cannabis Regulation and Safety Act and any subsequent State of California legislation regarding the same. "Distribution" means engaging in that conduct and "distribution facility" is any real estate, whether or not improved, used in such conduct.
- I. "Cannabis manufacturing" means any aspect of extraction, infusion, processing, preparing, holding, storing, packaging, labeling, or other preparation of cannabis products. Cannabis manufacturing also includes any processing, preparing, holding, or storing of components

and ingredients. "Manufacturer" also holds the same meaning as set forth in Business and Professions Code section 19300.5, as that statute may be amended or renumbered.

- J. "Cannabis nursery" means a facility that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.
- K. "Cannabis retail" means business, other than a business all of whose sales constitute Cannabis Distribution, where medicinal and adult-use cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination for sale, whether for profit or not, including an establishment that delivers cannabis or cannabis products as part of a sale.
- L. "Cannabis testing" means a facility, entity, or site that offers or performs tests of cannabis or cannabis products, offers no service other than testing, sells no products other than testing supplies and materials, and is accredited as operating to ISO standard 17025 by an accrediting body, licensed and registered with the applicable State agency in accordance with all applicable laws.
- M. "Canopy" means all areas occupied by any portion of a cannabis plant whether contiguous or noncontiguous on any one site. When plants occupy multiple horizontal planes (as when plants are placed on shelving above other plants) each plane shall be counted as a separate canopy area.
- N. "Delivery" means the commercial transfer of cannabis or cannabis product to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
- O. "Distributor – Transport Only" means a person involved in Distribution as limited by the Business and Professions Code and Title 16 California Code of Regulations Section 5315,

as may be amended.

- P. "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager, independent contractor, or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.
- Q. "Engaged in business" means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities, and whether operated for profit or not. A person shall be deemed engaged in business within the city if:
1. Such person or person's employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;
 2. Such person or person's employee owns or leases real property within the City for business purposes;
 3. Such person or person's employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;
 4. Such person or person's employee regularly conducts solicitation of business within the City;
 5. Such person or person's employee performs work or renders services in the of City;
and
 6. Such person or person's employee utilizes the streets within the City in connection with the operation of motor vehicles for business purposes.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in business."

- R. "Gross receipts", means the total amount actually received or receivable from all cannabis sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit is 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. Included in "gross receipts" shall be 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 the material used, labor or service costs, interest paid or payable, or losses or other expenses
- S. "Person" includes any individual, firm, 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.
- T. "Sale" means and includes any sale, exchange, or barter.
- U. "State" means the State of California.
- V. "State license", "license", or "registration" means a State license issued pursuant to California Business and Professions Code Section 26000 et seq. or other applicable State law.
- W. "Tax Administrator" means the Finance Director of the City of Santa Clara or his or her designee.
- X. "Transporter" has the same meaning as under State laws and regulations including, but not limited to, Business and Professions Code section 19300.5.

3.60.060 Tax Imposed.

- A. Tax on Cannabis Businesses by Gross Receipts and/or Square Footage: Every person who is engaged in a cannabis business in the City of Santa Clara shall pay to the City a cannabis business tax at the initial rates established as follows, should the City allow such activity.

Taxpayers engaged in one or more of the following commercial activities shall pay the tax

rate applicable to each such activity:

1. Retail: 5% of gross receipts; and
 2. Manufacturing: 5% of gross receipts; and
 3. Cultivation: \$6 per sq. ft. of canopy, or 5% of gross receipts, whichever is greater;
and
 4. Distribution: 3% of gross receipts; and
 5. Nurseries: 3% of gross receipts; and
 6. Testing: 3% of gross receipts; and
 7. Transportation: 3% of gross receipts.
- B. The City Council may at its discretion, at any time by resolution, but not more than once per calendar year, increase or decrease the rates for the different categories of cannabis business. However, in no event may the City Council set any adjusted rate that exceeds the maximum rate. The maximum rate for all commercial cannabis businesses shall be set at ten percent (10%) of gross receipts and/or \$25 per square foot area of cultivation.

3.60.070 Reporting and Remittance.

- A. The cannabis business tax imposed by this chapter is a tax payable in quarterly, or monthly, installments for all commercial cannabis activities other than retail. Cannabis business tax for retail activities must be paid monthly. The tax year for purposes of this chapter is a Calendar Year. No later than the last day of the month following the end of each calendar quarter or month, each person owing cannabis business tax shall file with the Tax Administrator a statement of the tax owed for that calendar quarter or month, whichever is applicable, and the basis for calculating that tax. The tax shall be due and payable on the same date that the statement for the calendar quarter is due. The Tax Administrator may require that the statement be submitted on a form prescribed by the Tax Administrator.
- B. If the due date would fall on a Saturday, Sunday or a holiday observed by the City, the due date shall be the next regular business day on which the City is open to the public.

- C. The quarterly, or monthly, installment (for all cannabis taxes other than cultivation tax paid on a square footage basis) shall be no less than the amount calculated by applying the relevant tax rate to the actual gross receipts for the quarter or month.
- D. The quarterly or monthly installment for cultivation tax paid on a square footage basis shall be calculated based upon a presumption that the maximum square footage of canopy allowed under the cultivation permit issued to the cannabis business by the City was used. This maximum square footage shall be multiplied by the then-applicable tax per square foot, and prorated for the period of the installment, in order to calculate the amount of the installment payment due.
- E. Upon cessation of a cannabis business, for any reason, tax statements and tax payments shall be immediately due and payable for all calendar quarters up to and including the calendar quarter during which cessation occurred.
- F. The Tax Administrator may require that tax payments be remitted via cashier's check, money order, wire transfer, or similar instrument.
- G. The Tax Administrator 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.
- H. Any quarterly, or monthly, installment or final tax payment that is not timely made shall be subject to the penalties and interest set forth in Section 3.60.090.

3.60.080 Delinquencies.

The taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Section 3.60.070.

3.60.090 Penalties and interest.

- A. Any person who fails or refuses to pay the cannabis business tax pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to ten percent (10%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one percent (1.0%) per month.
 2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax, plus interest at the rate of one percent (1.0%) per month on the unpaid tax and on the unpaid penalties.
 3. 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. Whenever a check or electronic payment is submitted in payment of a cannabis business tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any fees, penalties and interest as provided for in this Section, and any other amount allowed under state law.
- C. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

3.60.100 Action to collect.

Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the City to bring any other action including criminal, civil and equitable actions, in exercise of its prosecutorial discretion under SCCC 1.05.070, and to seek any remedies available at law or equity, based upon the failure to pay the tax, penalties and/or fees imposed by this Chapter, or the failure to comply with any of the provisions of this Chapter.

3.60.110 Appeal process.

Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the City Manager, or designee, by filing a notice of appeal with the City Clerk within thirty (30) calendar days of the serving or mailing of the determination of tax due. The notice of appeal shall state the name of the person submitting the appeal, telephone number and mailing address for the person submitting the appeal, and the basis for the appeal. The City Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and shall give notice of same in writing to the person submitting the appeal at the address stated on the notice of appeal. The finding of the City Manager, or designee, shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this Chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

3.60.120 Refunds.

- A. Whenever the amount of any cannabis business tax, delinquency amount or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Tax Administrator within one (1) year of the date the tax was originally due and payable.
- B. The Tax Administrator, his or her designee or any other City officer charged with the administration of this Chapter shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Tax Administrator to do so.
- C. In the event that the cannabis business tax was erroneously paid, and the error is attributable to the City, the City shall refund the amount of tax erroneously paid up to one (1) year from when the error was identified.

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

3.60.130 Administration.

- A. The Tax Administrator is authorized to collect the taxes, delinquency amounts, interest, penalties and fees, and perform the duties required by this Chapter.
- B. The Tax Administrator shall promulgate administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this Chapter to ensure the efficient and timely collection and enforcement of the cannabis business tax.
- C. The Tax Administrator may take such administrative actions as needed to administer the tax, including but not limited to:
 - 1. Provide to all cannabis business tax payers forms for the reporting of the tax;
 - 2. Provide information to any taxpayer concerning the provisions of this Chapter;
 - 3. Receive and record all taxes remitted to the city as provided by this Chapter;
 - 4. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
 - 5. Conduct audits of taxpayer records pursuant to this Chapter;
 - 6. Assess delinquency amounts and interest to taxpayers pursuant to this Chapter; and
 - 7. Determine amounts owed and enforce collection pursuant to this Chapter.

3.60.140 Audit and examination of records.

- A. For the purpose of ascertaining the amount of cannabis business tax owed or verifying any representations made by any taxpayer to the City in support of the tax calculation, the Tax Administrator shall have the power to inspect any location where cannabis business occurs and to audit and examine all books and records of persons engaged in cannabis business. In conducting such investigation, the Tax Administrator shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.
- B. It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all

records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the Tax Administrator or his/her designee shall have the right to inspect at all reasonable times.

- C. If, based upon the audit and examination of records, the Tax Administrator finds that previous cannabis tax statements incorrectly computed the tax due, then the Tax Administrator shall issue a written notice to the taxpayer setting forth the amount of the underpayment, including penalties and interest as set forth in 3.60.090, and demanding immediate payment. Such demand for payment may be made by the Tax Administrator within three (3) years of the date the tax was originally due. If the taxpayer disputes the calculation, then the taxpayer may file a notice of appeal pursuant to the process set forth in 3.60.110.

3.60.150 Payment of tax does not authorize unlawful business or activity.

The cannabis business tax is enacted solely for the stated purposes and not for any other regulatory purposes. The payment of any commercial cannabis business tax required under the provisions of this Chapter shall not be construed as authorizing the conduct or continuance of any illegal business, or of a legal business in an illegal manner. Nothing in this section implies the lawfulness of, or authorizes, any activity otherwise deemed unlawful under any applicable law.

3.60.160 Other Licenses, Permits, Taxes, Fees or Charges.

- A. Nothing in this chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provisions of Federal, State or local law.
- B. Nothing in this chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any other tax or fee or other charge imposed, assessed or required by any provisions of Federal, State or local law.
- C. Timely payment of cannabis business tax is a prerequisite to grant of or renewal of a cannabis business permit. Failure to timely remit payment of a cannabis business tax may

result in revocation of an active cannabis business permit.

3.60.170 Severability.

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, the remainder of the Chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.

3.60.180 Modification, amendment or repeal.

This Chapter may be repealed or amended by the City Council without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter above the maximum rates established by this Chapter. The people of the City of Santa Clara affirm that the following actions shall not constitute an increase of a tax:

- A. The restoration or adjustment of the rate of the tax to a rate that is no higher than that maximum rate set by this Chapter, if the City Council has acted to reduce the rate of the tax;
or
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter; or
- C. The collection of the tax imposed by this Chapter, even if the City had, for some period of time, failed to collect the tax.”

SECTION 2: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 3: Effective date. This ordinance shall take effect at the later of ten (10) days after the vote is declared by the City Council pursuant to Elections Code Section 9217, or when cannabis business is made a legal land use by the City Council.

Attachments incorporated by reference: None.