

ATTACHMENT "A" – FULL TEXT OF MEASURE

ORDINANCE NO. _____

AN ORDINANCE OF CITY OF SAN RAFAEL ADDING CHAPTER 3.40 TO THE SAN RAFAEL MUNICIPAL CODE ENTITLED "CANNABIS INDUSTRY TAX."

THE PEOPLE OF THE CITY OF SAN RAFAEL DO ORDAIN AS FOLLOWS:

DIVISION 1. Chapter 3.40 is hereby added to the San Rafael Municipal Code to read as follows:

CHAPTER 3.40 CANNABIS INDUSTRY TAX

3.40.010. Title. This ordinance shall be known as the Cannabis Industry Tax Ordinance.

3.40.020. Special Excise Tax. A special excise tax is imposed by this Chapter for funds to enhance police and fire services; repair potholes and maintain City streets; enhance City community centers; and administer a cannabis business regulation and oversight program.

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

A. To impose a special business tax on businesses engaged in the cannabis industry operating within the City of San Rafael pursuant to the state Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA"), specifically California Business and Professions Code section 19320 and the "California Control, Regulate and Tax Adult Use of Marijuana Initiative" approved by the state's voters on November 8, 2016.

B. To specify the type of tax and maximum rate of tax that may be levied and the method of collection; and

C. To comply with all requirements to impose a special excise tax, such tax to become operative only if and to the extent implemented by the City Council by resolution and approved by 2/3 voter approval.

3.40.040. Definitions. Terms that are not defined in this Chapter shall have the meanings ascribed to them in Section 10.96.040 of the San Rafael Municipal Code. The following words and phrases shall have the meanings set forth below when used in this Chapter unless the context plainly requires otherwise:

- A. "Licensee" as that term is defined in Section 10.96.040 of the San Rafael City Code.
- B. "Cannabis" 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 thereof. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407

of the Statutes of 1972, and amended by the California Control, Regulate and Tax Adult Use of Marijuana Initiative, and as defined by other applicable state law.

- C. "Cannabis industry tax" means the tax due pursuant to this Chapter for engaging in commercial cannabis activity in the City.
- D. "Cannabis product" means any product containing cannabis, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles and those products described in Section 11018.1 of the Health and Safety Code.
- E. "Commercial Cannabis Activity" as defined by Section 10.96.040 San Rafael Municipal Code.
- F. "Cannabis Business" means any business activity in the City relating to commercial cannabis activity.
- G. "City" means the City of San Rafael either the entity or its territorial limits, as the context requires.
- H. "City Council" or "Council" means the City Council of the City of San Rafael.
- I. "Collector" means the City's Finance Director or his or her designee.
- J. "Delivery" means the commercial transfer of cannabis or cannabis products from a non-storefront dispensary, up to an amount determined by the State Bureau of Cannabis Control to a primary caregiver or qualified patient as defined in [Section 11362.7 of the Health and Safety Code](#), or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the non-storefront dispensary, or independently licensed under this chapter that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.
- K. "Distributor" means a person engaged in procuring cannabis from a cultivator, and/or procuring cannabis products from a manufacturer, for sale to a dispensary. In addition, and without limiting the foregoing, "distributor" includes "distributor" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time. "Distribution" means engaging in that conduct and a "distribution facility" is any real estate, whether or not improved, used in such conduct.
- L. "Employee" means each and every person engaged in the operation or conduct of any cannabis business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in

such cannabis business for a wage, salary, commission, barter or any other form of compensation.

- M. "Gross Receipts," means "Gross Receipts" as that term is defined in Section 10.04.010 "definitions" of the San Rafael City Code.
- N. "Manufacturer" means a person who conducts 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, or that packages or repackages cannabis or cannabis products or labels or re-labels its container. In addition, and without limiting the foregoing, "manufacturer" includes "manufacturer" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time.
- O. "Sale" means "Sale" as that term is defined in Section 10.04.010 of the San Rafael Municipal Code.
- P. "State" means the State of California.

3.40.050. Tax Authorized. A cannabis industry tax is hereby imposed on every person who is engaged in commercial cannabis activity in the City as prescribed herein, from and after the effective date of a City Council resolution implementing the tax. It is unlawful for any person to transact or carry on any cannabis business in the City without paying, in accordance with this Chapter, the cannabis industry tax imposed by this section.

A. Tax on Cannabis Manufacturers, Distributors, and Delivery Retailers

- 1. There is hereby imposed on every licensee engaged in a cannabis business in the City as an infused product manufacturer, distributor, testing laboratory, or non-storefront delivery an annual tax at a rate established by resolution of the City Council which rate shall not exceed eight percent (8%) of annual gross receipts. The tax imposed shall be due and payable in installments as provided in Section 3.40.070 of this Chapter. The tax imposed shall not be implemented unless and until the City Council acts by resolution to do so.
- B. The City Council may by resolution, in its discretion, implement a tax rate lower than the maximum rate established:
- 1. For all persons engaged in the commercial cannabis industry differing tax rates can be set for different categories of cannabis business. For example, and without limitation, the City Council may set different rates for businesses serving medical or adult use, or for different types of manufacturers, distributors, testing laboratories or non-store front delivery retailers. The City Council may, by

resolution, also decrease or increase any such tax rate from time to time, provided that the tax rate shall not, at any time, exceed the maximum tax rate established. Tax rates shall be set for a minimum of a two (2) year term.

2. Persons subject to the tax imposed shall also register and pay the registration fee described in Section 3.40.060 of this Chapter, but shall be exempt from paying the general business tax required under Section 10.04.105 and 10.04.106 of the San Rafael Municipal Code for any such cannabis business. A business not subject to the cannabis industry tax imposed by this Chapter is subject to the general business tax required under Sections 10.04.105 and 10.04.106 of the San Rafael Municipal Code except as otherwise provided by Chapter 3.40 of this Code or other applicable law.
3. No further voter approval shall be required for the adoption or increase of a tax under the authority granted by Section 3.40.050 of this Chapter, it being the intent of the People of the City of San Rafael to authorize such a tax up to and including the maximum rates set forth above whenever implemented by the City Council hereafter.

3.40.060. Registration of Commercial Cannabis Activity. All licensees shall be required to annually register as follows:

- A. All persons engaging in a cannabis business shall register with the Collector within thirty (30) days of commencing operation or by July 31, 2018, and shall annually renew such registration by January 1 of each year thereafter. In registering, such persons shall furnish to the Collector a sworn statement, upon a form provided by the Collector, setting forth the following information:
 - The name of the business
 - The names and addresses of each owner
 - The exact nature or kind of business
 - The place where such business is to be carried on
 - A valid San Rafael Cannabis Operator License
 - Estimated Gross Receipts
 - Any further information which the Collector may require.
- B. Any financial information required under Subsection A will be used only to calculate and enforce the tax imposed under this Chapter, will be exempt from disclosure under the Public Records Act pursuant to Government Code section 6254(i), and will not be used by the City for criminal enforcement except as provided in Sections 3.40.270 and 3.40.280 of this Chapter.
- C. An annual registration fee of \$250 shall be presented with the sworn statement submitted under this section. This fee shall not be considered a tax and may be adjusted by resolution of the City Council.

- D. Unless otherwise specifically provided by the Collector in writing, the annual fee under this section shall be due and payable in advance, on the first day of January, and shall be considered delinquent if unpaid after the last day of February. The date on which the fee becomes delinquent may be extended in writing by the Collector, upon good cause shown, to a date not later than March 31st.
- E. For each cannabis business subject to tax under this Chapter, a separate registration and fee shall be required under this section for each branch or location of the business and for each separate type of cannabis business at each branch or location.
- F. Upon receipt of the registration and fee required under this Section, the Collector shall issue to the cannabis business a Certificate of Registration. Such Certificate of Registration shall be non-transferrable except as otherwise provided by the Collector in writing.

3.40.070. Reporting and Remittance of Tax. The cannabis industry tax imposed by this Chapter shall be due and payable as follows:

- A. Each person subject to tax under this chapter shall, on or before the last day of the month following the close of each calendar quarter, prepare and submit a tax return and remit to the Collector the tax due for that quarter. At the time the return is filed, the full amount of the tax due for the prior quarter shall be remitted to the Collector. At any time, a business may apply in writing to the Collector to have these tax returns and payments made less frequently or on a different schedule. Any determination resulting from this application will be at the sole discretion of the Collector and shall be provided in writing.
- B. All tax returns shall be completed on forms prescribed by the Collector.
- C. Tax returns and payments for all outstanding taxes owed the City under this Chapter are immediately due and payable to the City of San Rafael upon cessation of business for any reason.

3.40.080. Payments and Communications – Timely Remittance. Whenever any payment, return, report, request or other communication is due under this Chapter, it must be received by the Collector on or before the due date. A postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday or a City holiday, the due date shall be the next regular business day on which the City is open to the public.

3.40.090. Payment – When Taxes Deemed Delinquent. Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the City of San Rafael on or before the due date as specified in Section 3.40.070.

3.40.100. Notice Not Required By City. The City of San Rafael is not required to send a delinquency or other notice or bill to any person subject to this Chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty or interest due under this Chapter.

3.40.110. Delinquent Taxes – Penalties and Interest. Penalties and interest shall be applied according to Section 3.20.080 of the San Rafael Municipal Code.

3.40.120. Waiver of Penalties. The Collector may waive the penalties imposed upon any person if:

- A. The person provides evidence satisfactory to the Collector that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent cannabis industry tax and accrued interest owed the City before applying to the Collector for a waiver.
- B. The waiver provisions specified in this subsection shall be granted to a particular cannabis business only once during any twenty-four-month period.

3.40.140. Exemptions from the Tax.

- A. Nothing in this Chapter shall be deemed or construed to apply to any person transacting and carrying on any business that is exempt from the payment of such taxes as are herein prescribed by virtue of the Constitution or applicable statutes of the United States or of the State.
- B. Any person claiming an exemption pursuant to this Section shall file a sworn statement with the Collector stating the facts upon which exemption is claimed. Unless and until the Collector determines in writing that such person is exempt from tax under this Chapter, such person shall be liable for the payment of the tax imposed by this Chapter.
- C. This Chapter shall not be deemed or construed to require the payment of any general business tax under Chapter 10.04 of the San Rafael Municipal Code for any commercial cannabis activity that is subject to payment of a cannabis industry tax under this Chapter.

3.40.150. Enforcement. It shall be the duty of the Collector to enforce each and all of the provisions of this Chapter, in accordance with the procedures of Section 10.04.090 of this Code.

3.40.160. Rules and Regulations. The Collector may adopt rules and regulations not inconsistent with the provisions of this Chapter as may be necessary or desirable to aid in the implementation and enforcement of the provisions of this Chapter. A copy of any such rules and regulations shall be available for public inspection in the Collector's office and on the City's website.

3.40.170 Apportionment. If a cannabis business subject to cannabis industry tax is operating both within and outside the City, it is the intent of the City to apply the cannabis industry tax so

that measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the City. The Collector may adopt administrative procedures for apportionment pursuant to section 3.40.160.

3.40.180. Construction.

- A. This tax is intended to be applied in a manner consistent with the United States and California Constitutions, state and local law. None of the tax provided for by this Chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution, state or local law.
- B. This Chapter shall be construed and implemented consistent with the provisions of Chapter 10.04 of this Code except as this Chapter or other law otherwise requires or the Collector otherwise determines in writing as authorized under this Chapter.

3.40.190. Audit and Examination of Records and Equipment.

- A. The Collector shall have the power to audit and examine all books and records of any person engaged in cannabis business in the City, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in cannabis business, and, where necessary, all equipment of any person engaged in cannabis business in the City, for the purpose of ascertaining the amount of cannabis industry tax, if any, required to be paid under this Chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this Chapter. If such person, after written demand by the Collector, refuses to make available for audit, examination or verification of such books, records or equipment as the Collector requests, the Collector may, after full consideration of all information within his or her knowledge concerning the cannabis business and activities of the person so refusing, make an assessment against the cannabis business of the taxes estimated to be due under this Chapter, following the procedures, rights and obligations set forth in Section 3.20.090 of the San Rafael City Code.
- 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 from when the tax was due and originally payable, 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 Collector shall have the right to inspect at all reasonable times.

3.40.200. Other Licenses, Permits, Taxes, Fees, or Charges. Except as expressly provided in this Chapter, nothing contained 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 provision of any other title or Chapter of this Code or any other ordinance or

resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax (except business license tax), fee or other charge imposed, assessed or required by, under or by virtue of any other title or Chapter of this Code or any other ordinance or resolution of the City. Any references made or contained in any other title or Chapter of this Code to any permits, licenses, taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the permits, licenses, taxes, fees or charges, or schedule of license fees, provided for in other titles or Chapters of the San Rafael Municipal Code unless otherwise expressly provided.

3.40.210. Payment of Tax Does Not Authorize Unlawful Business.

- A. The payment of a tax required by this Chapter, and its acceptance by the City, shall not entitle any person to engage in any cannabis business unless the person has complied with all of the requirements of this Code and all other applicable state or local laws.
- B. No tax paid under this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any state or local laws.

3.40.220. Deficiency Determinations. If the Collector is not satisfied that any tax return or other statement filed as required under this Chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the facts contained in the tax return or statement or any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable, or such later date as allowable by law. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Section 3.40.250.

3.40.230. Failure to Report – Nonpayment.

Under any of the following circumstances and at any time, the Collector may make and give notice of an assessment of the amount of tax owed by a person under this Chapter:

1. If the person has not filed a complete return or statement required under this Chapter.
2. If the person has not timely paid any tax, fee, interest and/or penalties due under of this Chapter.
3. If the person has not, after demand by the Collector, filed a corrected return or statement, or furnished to the Collector adequate substantiation of the information contained in a return or statement filed previously.

The notice of assessment shall separately set forth the amount of any tax, fee, interest and/or penalties known by the Collector to be due or estimated by the Collector, after consideration of all information within the Collector's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Chapter.

3.40.240. Tax Assessment – Notice Requirements. The notice of assessment shall be served upon the person liable for the tax under this Chapter either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Collector for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Collector for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

3.40.250. Appeal Procedure. Any taxpayer aggrieved by any decision of the Collector with respect to the amount of tax, fee, interest and penalties, if any, due under this Chapter may appeal to the City Manager, or their designee by filing a written appeal with the Clerk of the San Rafael City Council within fifteen (15) calendar days of the mailing of the decision or determination. The Clerk shall schedule the appeal and give fifteen (15) days written notice to the appellant of the time and place of hearing by serving the notice personally or by depositing in the United States Post Office in the City, postage prepaid, addressed as shown on the appeal papers or, if none, such other address as is known to the City or, absent any address, by publication in a newspaper of general circulation in the City. The City Manager, or designee considering the appeal shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of this Chapter.

3.40.260. Conviction for Chapter Violation – Taxes not Waived. The conviction and punishment of any person for failure to pay a required tax, fee, penalty and/or interest under this Chapter shall not excuse or exempt such person from any civil action for the amounts due under this Chapter. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

3.40.270. Violation Deemed Misdemeanor. Any person who violates any provision of this Chapter or who other than by a sworn statement, knowingly or intentionally misrepresents to any officer or employee of the City any material fact herein required to be provided is guilty of a misdemeanor punishable as provided in section 1.16.060 San Rafael Municipal Code. A person who on a sworn statement states as true a material fact that he or she knows to be false is guilty of perjury.

Any violation of this chapter may be enforced either as an infraction, a misdemeanor, by an administrative citation or administrative order pursuant to Chapters 1.44 or 1.46 of this Code, or by any other remedy available to the city under this Code or state law. All such remedies shall be alternative to or in addition to or in conjunction with, and not exclusive of, one another. The election of remedies shall be at the sole discretion of the City.

3.40.280. Actions to Collect. The amount of any tax, fee, penalty and/or interest imposed pursuant to this Chapter shall be deemed a debt owed to the City. An action may be commenced in the name of the City in any court of competent jurisdiction, for the amount of any delinquent tax, fees, penalties and interest thereon, collection costs and reasonable attorney's fees.

3.40.290. Severability. If any provision of this Chapter, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

3.40.300. Remedies Cumulative. All remedies and provisions prescribed under this Chapter shall be cumulative of, and in addition to, all of the obligations, prohibitions, requirements, and remedies contained in other chapters of this code and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

3.40.310. Amendment or Repeal. This Chapter may be repealed or amended by ordinance of the San Rafael City Council without a vote of the People except that, as required by Article XIII C of the California Constitution, any amendment that increases the maximum rates of tax beyond the levels authorized in Section 3.40.050 above shall not take effect unless approved by a vote of the People. The City Council may, by resolution, implement a tax under this Chapter in any amount or at any rate that does not exceed the maximum rates set forth in Section 3.40.050.

DIVISION 2. CEQA. The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). The cannabis industry tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action nor does it authorize any private activity, but merely taxes such activity as otherwise occurs. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax are used for a purpose that would have either such effect, the City will undertake the required CEQA review for that project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required at this time.

DIVISION 3. Effective and Operative Dates. This ordinance shall take effect 10 days after the election result is certified as provided by Elections Code but the taxes imposed by this ordinance shall take effect only when and to the extent implemented by resolution of the City Council.

DIVISION 4. Certification; Publication. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published, in full or in summary form, according to law.