

City of Sonoma

RESOLUTION # 31 - 2020

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SONOMA, CALIFORNIA APPROVING A BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS OF THE CITY TO IMPOSE A CANNABIS BUSINESS TAX; AND TO INCREASE THE CITY'S APPROPRIATIONS LIMIT FOR A FOUR YEAR PERIOD; CALLING AND GIVING NOTICE OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 3, 2020, REQUESTING THE ASSISTANCE OF THE COUNTY OF SONOMA IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH THE STATEWIDE GENERAL ELECTION HELD ON THAT DATE; AND AUTHORIZING THE CITY CLERK TO CARRY OUT ALL THE NECESSARY PROCEDURES FOR SAID ELECTION SUBMITTING TO THE VOTERS THE QUESTION RELATING TO THE CANNABIS BUSINESS TAX**

**WHEREAS**, Sections 37101 and 37100.5 of the California Government Code authorize the City to levy a license tax, for revenue purposes, upon business transacted in the City; and

**WHEREAS**, as a result of recent voter-approved changes to state law and new state regulations being implemented, there has been a very strong interest by cannabis businesses to open in the City; and

**WHEREAS**, cannabis businesses are likely to create demands upon City services, and the City's current tax does not currently impose any taxes on cannabis businesses, aside from generally applicable municipal taxes;

**WHEREAS**, the City Council proposes the adoption of a cannabis tax ordinance to impose a tax on cannabis and hemp activities in order to impose the license tax upon cannabis and hemp businesses to be known as the "Cannabis Business Tax"; and

**WHEREAS**, the Cannabis Business Tax cannot be imposed without voter approval if it does not include cannabis and hemp activities in the ordinance or if it amends any language which can be interpreted to impose a new tax on any activity which was not specifically defined by such ordinance that was approved by the voters; and

**WHEREAS**, the City Council desires to submit a Cannabis Business Tax measure to the voters of the City at the next statewide General Municipal Election to be held on Tuesday, November 3, 2020, and to be consolidated with any other election to be held on that date; and

**WHEREAS**, the proposed Cannabis Business Tax is more completely described in the ordinance attached hereto as Attachment "A" and incorporated herein by reference (the "Tax Ordinance"); and

**WHEREAS**, Article XIII B of the California Constitution established the Gann limit, which imposes a ceiling on local government appropriations; and

**WHEREAS**, section 4 of Article XIII B of the California Constitution permits the voters of a local jurisdiction to alter the appropriations limit by a majority vote; and

**WHEREAS**, the City Council seeks to increase the City's appropriation limit by the amount of revenue raised by the proposed imposition of the cannabis business tax and submit the question of increasing the City's appropriation limit to the City's electorate at the November 3, 2020 election; and

**WHEREAS**, it is desirable that the aforementioned election be consolidated with the statewide general municipal election to be held on the same date and that within the City, the precincts, polling places, and election officers of the consolidated elections be the same; and

**WHEREAS**, it is desirable that the County Elections Department of the County of Sonoma canvass the returns of the statewide general municipal election and that the elections be handled in all respects as if there were only one election; and

**WHEREAS**, pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15378(B)(4), adoption of this Ordinance as a government funding mechanism is not a project subject to the requirements of CEQA. Prior to commencement of any project that may result from the expenditure of revenues from this tax increase, any necessary environmental review required by CEQA shall be completed. In addition, pursuant to CEQA Guidelines section 15060(c)(3) and 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 were used for a purpose that would have either such effect, the city would undertake the required CEQA review for that particular project.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SONOMA AS FOLLOWS:**

**Section 1. Recitals.** The City Council hereby finds and determines that the foregoing recitals are true and correct and are hereby incorporated by reference.

**Section 2. Proposal of Cannabis Tax.** The City Council hereby proposes to add a Cannabis Business Tax as set forth in the ordinance specified in Section 6.

**Section 3. Proposal of Increase in Appropriations Limit.** The City Council proposes the adoption of an increase in the City's appropriations limit by the amount of revenues generated by the cannabis business tax as set forth in the Ordinance specified in Section 6.

**Section 4. Election.** The City Council hereby calls for a General Election for Tuesday November 3, 2020 (the "Election") and orders, pursuant to Section 9222 of the Elections Code, that the Tax Ordinance be submitted to the voters at that election.

**Section 5. Ballot Question.** The question submitted by Sections 2 and 3 of this Resolution shall appear on the ballot as follows:

To provide funding for general City services including, but not limited to, police, fire, roads, parks, and recreation, shall the City on an ongoing basis tax cannabis (marijuana) and hemp businesses at annual rates not to exceed 4% of gross receipts for all cannabis businesses, including, but not limited to, retail (estimated \$200,000 annually all funds used locally), and increase the City's appropriations limit for Fiscal Years 2020/21-2023/24 by the amount of the tax?	YES	
	NO	

**Section 6. Proposed Ordinance.** The proposed Ordinance to be submitted to the voters is attached hereto as Exhibit "A" and incorporated by this reference. The City Council hereby approves the proposed ordinance, in the form hereof, and its submission to the voters of the City at the November 3, 2020 election. The Board of Supervisors of the County of Sonoma is requested to order the County Elections Department to set forth in the voters information portion of all sample ballots to be mailed to qualified electors of the City the full text of the Ordinance and to mail with the sample ballots to the electors printed copies of the full text of the

Ordinance, together with the primary arguments and rebuttal arguments (if any) for and against the measure, and to provide absent voters ballots for the election for use by qualified electors of the City who are entitled thereto in the manner provided by law.

**Section 7. Approval.** Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority of those casting ballots on the measure.

**Section 8. Consolidation.** Pursuant to Section 10400 et seq. of the Elections Code, the Board of Supervisors of Sonoma County is requested to consolidate the Election with the Statewide General Election held on the same day.

**Section 9. Canvass.** The Sonoma County Elections Department is authorized to canvass the returns of the Election. The election shall be handled in all respects as if there were only one election, and only one form of ballot shall be used.

**Section 10. Conduct of Election.** Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the County Clerk to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

**Section 11.** The City Clerk shall file a certified copy of this Resolution with the Board of Supervisors and the County Elections Department of the County of Sonoma.

**Section 12.** The City Attorney shall prepare an impartial analysis of the measure not to exceed five hundred (500) words in length showing the effect of the measure on the existing law and the operation of the measure.

**Section 13.** The polls for the election shall be open at 7 a.m. of the day of the election and shall remain open continuously from that time until 8 p.m. of the same day, when the polls shall be closed, except as provided in Section 14401 of the Elections Code.

**Section 14.** That the City Clerk is directed to set the deadlines, in accordance with statute, for the submission of ballot arguments pursuant to California Elections Code Sections 9282, 9286 and 9285. The provisions of Elections Code Section 9285(a) are hereby adopted. Direct arguments shall not exceed three hundred (300) words and shall be signed by not more than five (5) persons and when the City Clerk has selected the arguments for and against the measure which will be printed and distributed to the voters, the clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors may prepare and submit rebuttal arguments not exceeding 250 words which may be signed by not more than five (5) persons; those persons may be different persons than the persons who signed the direct arguments. The rebuttal arguments shall be filed with the City Clerk not more than ten (10) days after the final date for filing direct arguments. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

- a. The last day for submission of direct arguments for or against the measure shall be by 12:00 p.m. on August 17, 2020.
- b. The last day for submission of rebuttal arguments for or against the measure shall be by 12:00 p.m. on August 27, 2020.
- c. Pursuant to Elections Code Section 9282(b), City Manager is directed to prepare and the Mayor is hereby authorized to review, modify, and sign a written argument and rebuttal (if necessary) in favor of the proposed Ordinance on behalf of the City Council. At the Mayor's discretion, the argument may also be signed by other City

Councilmembers, bona fide associations and/or by individual voters who are eligible to vote. If more than one argument for or more than one argument against the measure is submitted, the City Clerk shall select one of the arguments in favor and one argument against the measure, as set forth in Elections Code section 9287.

**Section 15.** The City Clerk is hereby directed to issue instruction to the County Elections Department and to take any and all steps necessary for the holding of the election.

**Section 16.** In accordance with Section 12111 of the Elections Code and Section 6061 of the Government Code, the City Clerk is hereby authorized and directed to cause notice of the measure to be published once in the Sonoma Index Tribune, a newspaper of general circulation, printed, published, and circulated in the City of Sonoma and hereby designated for that purpose by the Council of Sonoma. The City Clerk may request that the County of Sonoma Elections Department prepare and publish the required notice.

**Section 17.** The City Manager is hereby authorized and directed to expend the necessary funds to pay for the City's cost of placing the measure on the election ballot.

**Section 18.** In all particulars not prescribed in this resolution, the election shall be held as prescribed in the Elections Code of the State of California.

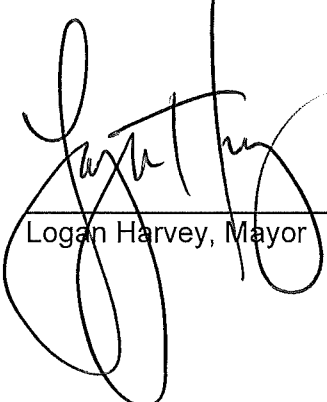
**Section 19.** This Resolution shall be forthwith entered upon the minutes of this Council and kept and maintained by the City Clerk of Sonoma.

**Section 20.** The City Clerk and other City officers and employees are hereby authorized and directed to take all other actions that are necessary to have the said measure properly submitted to the City voters at the statewide general election on November 3, 2020.

**Section 21.** This Resolution shall be effective immediately upon adoption.

**APPROVED and ADOPTED** this 1<sup>st</sup> day of June 2020.

**AYES:**            *AGRIMONTI, COOK, HARRINGTON, HUNDLEY, HARVEY*  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**



Logan Harvey, Mayor

**ATTEST:**



Rebekah Barr, MMC  
City Clerk

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**ABSTAIN:**  
**ABSENT:**

  
\_\_\_\_\_  
Logan Harvey, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Rebekah Barr, MMC  
City Clerk

**EXHIBIT A**

EXHIBIT A

ORDINANCE # \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SONOMA ADDING CHAPTER 5.38 (CANNABIS BUSINESS TAX) TO TITLE 5 OF THE SONOMA MUNICIPAL CODE ESTABLISHING A TAX ON CANNABIS BUSINESS ACTIVITIES WITHIN THE CITY**

**THE PEOPLE OF THE CITY OF SONOMA DO ORDAIN AS FOLLOWS:**

**SECTION 1. CODE AMENDMENT.** Chapter 5.38 is added to Title 5 of the Sonoma Municipal Code to read as follows:

**CHAPTER 5.38**

- 5.38.010 Title.
- 5.38.020 Authority and purpose.
- 5.38.030 Intent.
- 5.38.040 Definitions.
- 5.38.050 Tax imposed.
- 5.38.060 Registration, reporting, and remittance of tax.
- 5.38.070 Payments and communications –timely remittance.
- 5.38.080 Payment – when taxes deemed delinquent.
- 5.38.090 Notice not required by City.
- 5.38.100 Penalties and interest.
- 5.38.110 Refunds and credits.
- 5.38.120 Refunds and procedures.
- 5.38.130 Personal cultivation not taxed.
- 5.38.140 Administration of the tax.
- 5.38.150 Appeal procedure.
- 5.38.160 Enforcement –action to collect.
- 5.38.170 Apportionment.
- 5.38.180 Constitutionality and legality.
- 5.38.190 Audit and examination of premises and records.
- 5.38.200 Other licenses, permits, taxes or charges.
- 5.38.210 Payment of tax does not authorize unlawful business.
- 5.38.220 Deficiency determinations.
- 5.38.230 Failure to report – nonpayment, fraud.
- 5.38.240 Tax assessment –notice requirements.
- 5.38.250 Tax assessment – hearing, application, and determination.
- 5.38.260 Relief from taxes-disaster relief.
- 5.38.270 Conviction for violation – taxes not waived.
- 5.38.280 Violation deemed misdemeanor.
- 5.38.290 Severability.
- 5.38.300 Remedies cumulative.
- 5.38.310 Amendment or modification.

**5.38.010 Title.**

This ordinance shall be known as the Cannabis Business Tax Ordinance.

**5.38.020 Authority and Purpose.**

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon cannabis businesses that engage in business in the City. The Cannabis Business Tax is levied based upon business gross

receipts. It is not a sales and use tax, a tax upon income, or a tax upon real property and shall not be calculated or assessed as such. The Cannabis Business Tax shall not be separately identified or otherwise specifically assessed or charged to any member, customer, patient, or caretaker. The Cannabis Business Tax is a general tax enacted solely for general, governmental purposes of the City and not for specific purposes. All of the proceeds from the tax imposed by this section shall be placed in the City's general fund and be available for any lawful municipal purpose.

**5.38.030 Intent.**

The intent of this Ordinance is to levy a tax on all cannabis or industrial hemp businesses that operate in the City, regardless of whether such business would have been legal at the time this section was adopted. Nothing in this section 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.

**5.38.040 Definitions.**

The following words and phrases shall have the meanings set forth below when used in this section:

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 1 through December 31, of the same year.

C. "Cannabis" means all parts of the plant *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 cannabis. "Cannabis" shall not include "industrial hemp," unless otherwise specified.

D. "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 cannabis products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medicinal cannabis products.

E. "Canopy" means all areas occupied by any portion of a cannabis or industrial hemp 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.

F. "Cannabis business" means any business activity involving cannabis or industrial hemp, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and wholesaling of cannabis, cannabis products, industrial hemp, industrial hemp products or of ancillary products and accessories, whether or not carried on for gain or profit.

G. "Cannabis business tax" or "business tax," means the tax due pursuant to this chapter for engaging in a cannabis business in the City.



H. "Commercial cannabis cultivation" means cultivation of cannabis or industrial hemp undertaken in the course of conducting a cannabis business.

I. "Commercial cannabis permit" means a permit issued by the City to a person to authorize that person to operate a cannabis business or engage in business as a cannabis business within the City.

J. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis or industrial hemp and includes, but is not limited to, the operation of a nursery.

K. "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 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.

L. "Engaged in business as a cannabis business" means the commencing, conducting, operating, managing or carrying on of a cannabis business, 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. 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; or
5. Such person or person's employee performs work or renders services in the City.

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

M. "Evidence of doing business" means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the City.

N. "Gross Receipts," except as otherwise specifically provided, means, whether designated as a sales price, royalty, rent, membership fee, ATM service fee, delivery fee, slotting fee, any other fee, vaping room service charge, commission, dividend, or other designation, the total amount (including all receipts, cash, credits, services and property of any kind or nature) received or payable for sales of goods, wares or merchandise, or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), 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, losses or any other expense

whatsoever. However, the following shall be excluded from Gross Receipts:

1. Cash discounts where allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
5. Cash value of sales, trades or transactions between departments or units of the same business located in the City of Sonoma or if authorized by the Tax Administrator in writing in accordance with section 5.38.140 (B);
6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;
7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;
8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the City's Administrative Services Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.
9. Retail sales of non-cannabis products, such as t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis or industrial hemp) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 5.38.140 shall not be subject to the cannabis business tax under this section. However, any business activities not subject to this section as a result of an administrative ruling shall be subject to the appropriate business tax provisions of Title 5, Chapter 5.04 or any other Title or Chapter of this code as determined by the Tax Administrator.
10. Payments made by the tax-reporting cannabis business (Seller) to a cannabis business (Buyer) for the difference in the original acquisition price and subsequent renegotiated or finalized selling price of products or services sold to a specific end customer. This type of transaction is referred to as a "Billback". The tax-reporting cannabis business must provide supporting documentation to substantiate the transaction in order to be eligible for an exemption.

O. "Industrial hemp" means a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the

dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.

P. "Industrial hemp products" means any raw hemp that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. "Hemp product" also means hemp products as defined by Section 11018.5 of the California Health and Safety Code.

Q. "Lighting" means a source of light that is primarily used for promoting the biological process of plant growth. Lighting does not include sources of light that primarily exist for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via small skylights, windows or ventilation openings.

R. "Medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, intended to be sold or sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, for a medicinal cannabis patient in California who possesses a physician's recommendation, or a cannabis card issued pursuant to Health and Safety Code Section 11362.71.

S. "Nursery" means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis or industrial hemp industrial hemp.

T. "Person" means an 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, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

U. "Processing" means a cultivation site that conducts only trimming, drying, curing, grading, packaging, or labeling of cannabis, industrial hemp and nonmanufactured cannabis products.

V. "Sale" "Sell" and "to sell" means and includes any sale, exchange, or barter. It shall also mean any transaction whereby, for any consideration, title to cannabis, cannabis products, industrial hemp and/or industrial hemp products are transferred from one person to another and includes the delivery of cannabis, cannabis products, industrial hemp and/or industrial hemp products pursuant to an order placed for the purchase of the same, but does not include the return of cannabis, cannabis products, industrial hemp and/or industrial hemp products to the licensee from whom the cannabis, cannabis product, industrial hemp and/or industrial hemp product was purchased.

X. "State" means the State of California.

Y. "State license," "license," or "registration" means a state license issued pursuant to California Business & Professions Code Section 26050, and all other applicable state laws, required for operating a cannabis business.

Z. "Tax Administrator" means the City Manager of the City of Sonoma or his or her designee.

AA. "Testing Laboratory" means a cannabis business that (i) offers or performs tests of cannabis, cannabis products, industrial hemp and/or industrial hemp products (ii) offers no service other than such tests, (iii) sells no products, excepting only testing supplies and materials,

(iv) is accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state and (v) is registered with the Bureau of Cannabis Control or other state agency.

**5.38.050 Tax Imposed.**

- A. Beginning January 1, 2021, there is imposed upon each person who is engaged in business as a cannabis business a cannabis business tax. Such tax is payable regardless of whether the business has been issued a business license or commercial cannabis permit to operate lawfully in the City or is operating unlawfully. The City's acceptance of a cannabis business tax payment from a cannabis business operating illegally shall not constitute the City's approval or consent to such illegal operations.
  
- B. The City Council may, by resolution or ordinance, increase or decrease the rate of the cannabis business tax, including the initial rate of cannabis business tax. The City Council may, by resolution or ordinance, increase or decrease the rate of the medicinal cannabis business tax, including the initial rate of the medicinal business tax, independent of other cannabis business tax activities. In addition, the City Council may, by resolution or ordinance, increase or decrease the rate of the cannabis business tax on hemp or hemp products, including the initial rate of the tax on hemp or hemp products independent of other cannabis activities. Notwithstanding the foregoing, in no event shall the City Council repeal this tax or set any adjusted rate that exceeds the maximum rates calculated pursuant to this section.
  
- C. The maximum rate of the cannabis business tax shall be calculated as follows:
  - 1. For every person engaged in commercial cannabis cultivation, including cultivation of industrial hemp, in the City:
    - a. The annual maximum rate shall not exceed:
      - i. Four percent (4%) of gross receipts in a facility that uses exclusively artificial lighting.
      - ii. Two and half percent (2.5%) of gross receipts in a facility that uses a combination of natural and supplemental lighting as defined in Section 5.38.040(Q) of this chapter.
      - iii. Two and half percent (2.5%) of gross receipts in a facility that uses no artificial lighting.
      - iv. Two and half percent (2.5%) of gross receipts in a facility that is a nursery.
  - 2. For every person engaged in the operation of a testing laboratory for cannabis, cannabis products, industrial hemp and/or industrial hemp products s/he/it shall be subject to the maximum tax rate not to exceed two percent (2%) of gross receipts.
  - 3. For every person engaged in retail sales of cannabis, cannabis products,

industrial hemp, and/or industrial hemp products, including as a retailer (dispensary) or non-storefront retailer (retail delivery business), or microbusiness, s/he/it shall be subject to the maximum tax rate not to exceed four percent (4%) of gross receipts.

4. For every person engaged in distribution of cannabis, cannabis products, industrial hemp and/or industrial hemp products, s/he/it shall be subject to the maximum tax rate not to exceed three percent (3%) of gross receipts.

5. For every person engaged in manufacturing or processing of cannabis, cannabis products, industrial hemp and/or industrial hemp products, or any other type of cannabis business not described in Section 5.38.050 (C) (1), (2), (3), or (4) s/he/it shall be subject to the maximum tax rate not to exceed four percent (4%) of gross receipts.

- D. Persons subject to the cannabis business tax shall register with the City and pay the registration fee pursuant to Section 5.38.060. They shall also be required to obtain a business license pursuant to Chapter 5.04 of this code; provided, however, that cannabis business activities subject to the cannabis business tax shall be excluded from determining the amount of any business license tax payable under Chapter 5.04.

**5.38.060 Registration, reporting and remittance of tax.**

- A. Registration of Cannabis Business. All cannabis businesses shall be required to annually register as follows:
1. All persons engaging in business as a cannabis business, whether an existing, newly established or acquired business shall register with the Tax Administrator within thirty (30) days of commencing operation and shall annually renew such registration within 30 days of the business registration anniversary date of each year thereafter. In registering, such persons shall furnish to the Tax Administrator a sworn statement, upon a form provided by the Tax Administrator, setting forth the following information:
    - i. The name of the business
    - ii. The names and addresses of each owner
    - iii. The exact nature or kind of business;
    - iv. The place where such business is to be carried on; and
    - v. Any additional information which the Tax Administrator may require.
- B. An annual registration fee in accordance with the current and approved City fee schedule 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.
- C. The cannabis business tax imposed by this section shall be paid, in arrears, on a monthly basis. Each person owing a cannabis business tax each calendar month shall, no later than the last day of the month following the close of the calendar

month, file with the Tax Administrator a statement (“tax statement”) of the tax owed for that calendar month and the basis for calculating that tax. The Tax Administrator may require that the tax statement be submitted on a form prescribed by the Tax Administrator. The tax for each calendar month shall be due and payable on that same date that the tax statement for the calendar month is due.

- D. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar months up to the calendar month during which cessation occurred.
- E. The Tax Administrator may, at his or her discretion, establish alternative reporting and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure effective collection of the cannabis business tax. The Tax Administrator may also require that a deposit, to be applied against the taxes for a calendar month, be made by a taxpayer at the beginning of that calendar month. In no event shall the deposit required by the Tax Administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar month. The Tax Administrator may require that a taxpayer make payments via a cashier’s check, money order, wire transfer, or similar instrument.

**5.38.070                      Payments and communications – timely remittance.**

Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be accepted as timely remittance. 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.

**5.38.080                      Payment - when taxes deemed delinquent.**

Unless otherwise specifically provided under other provisions of this section, the taxes required to be paid pursuant to this section shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 5.38.060 and 5.38.070.

**5.38.090                      Notice not required by the City.**

The City may as a courtesy send a tax notice to the cannabis business which owes the City a cannabis business tax. However, the Tax Administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this section. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this section.

**5.38.100                      Penalties and interest.**

A. Any person who fails or refuses to pay any cannabis business tax required to be paid pursuant to this section 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%) 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%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one percent (1%) 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.

**5.38.110 Refunds and credits.**

A. No refund shall be made of any tax collected pursuant to this section, except as provided in Section 5.38.120.

B. No refund of any tax collected pursuant to this section shall be made because of the discontinuation, dissolution, or other termination of a business.

**5.38.120 Refunds and procedures.**

A. Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City under this section, 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 or paid, whichever came first.

B. The Tax Administrator, his or her designee or any other City officer charged with the administration of this section 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 in an amount in excess of the tax due, and the error is attributable to the City, the City shall refund the amount of tax erroneously paid; provided that (i) a claim for refund has been timely filed with the Tax Administrator; and (ii) the refund cannot exceed, under any circumstance, the amount of tax overpaid during the twelve months preceding the last month for which the claim states the tax was overpaid.

**5.38.130 Personal Cultivation Not Taxed.**

The provisions of this section shall not apply to personal cannabis cultivation or personal use of cannabis, to the extent those activities are authorized in the "Medicinal and Adult Use Cannabis Regulation and Safety Act," as may be amended. This section shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and provided that the individual receives no compensation whatsoever related to that personal cultivation or use.

**5.38.140 Administration of the tax.**

A. It shall be the duty of the Tax Administrator to collect the taxes, penalties, fees, and perform the duties required by this section.

B. For purposes of administration and enforcement of this section generally, the Tax Administrator may from time to time promulgate such administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this section as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Tax Administrator may take such administrative actions as needed to administer the cannabis business tax, including but not limited to:

1. Provide to all cannabis business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this section;
3. Receive and record all taxes remitted to the City as provided in this section;
4. Maintain records of taxpayer reports and taxes collected pursuant to this section;
5. Assess penalties and interest to taxpayers pursuant to this section;
6. Determine amounts owed under and enforce collection pursuant to this section.

**5.38.150 Appeal procedure.**

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 section may appeal to the City Council by filing a notice of appeal with the City Clerk within thirty (30) calendar days of the serving or mailing of the Tax Administrator's determination of the amount due. The City Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the City Clerk, or his or her designee, shall give notice in writing to such operator at the last known place of address. The finding of the City Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this section 5.38.150 for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

**5.38.160 Enforcement - action to collect.**

Any taxes, penalties and/or fees required to be paid under the provisions of this section shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this section 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, based upon the failure to pay the tax, penalties and/or fees imposed by this section or the failure to comply with any of the provisions of this section.

**5.38.170 Apportionment.**

If a business subject to the tax is operating both within and outside the City, it is the intent of the City to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the City. To the extent federal or state law



requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The Tax Administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

**5.38.180                      Constitutionality and legality.**

This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this section 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 or state law. If a person believes that the tax, as applied to him or her, is impermissible under applicable law, he or she may request that the Tax Administrator release him or her from the obligation to pay the impermissible portion of the tax.

**5.38.190                      Audit and examination of premises and 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 his or her tax calculation, the Tax Administrator shall have the power to inspect any location where commercial cannabis cultivation or other commercial cannabis activity occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, state and federal income tax returns, and other records relating to the gross receipts of the business) of persons engaged in cannabis businesses. 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 section 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.

**5.38.200                      Other licenses, permits, taxes, fees or charges.**

A. Nothing contained in this section shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any commercial cannabis permit or City license required by, under or by virtue of any provision of any other 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, fee or other charge imposed, assessed or required under any other Chapter of this code or any other ordinance or resolution of the City. Any references made or contained in any other Chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other Chapters of this code.

B. The Tax Administrator may revoke or refuse to renew the license required by Chapter 5.38 of this code for any business that is delinquent in the payment of any tax due

pursuant to this section or that fails to make a deposit required by the Tax Administrator pursuant to Section 5.38.060.

A commercial cannabis permit issued under the Sonoma Municipal Code may be revoked, suspended or not renewed in the event that the business holding that permit has failed to (i) make a deposit required by the Tax Administrator pursuant to Section 5.38.060 or (ii) timely pay all taxes, interest and penalties owed by that business under this section.

**5.38.210 Payment of tax does not authorize unlawful business.**

A. The payment of a cannabis business tax required by this section, and its acceptance by the City, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this code and all other applicable state laws.

B. No tax paid under the provisions of this section shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law.

**5.38.220 Deficiency determinations.**

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this section 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 basis of the facts contained in the statement or upon the basis of 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. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a cannabis business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such cannabis business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. 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 5.38.240.

**5.38.230 Failure to report—nonpayment, fraud.**

A. Under any of the following circumstances, the Tax Administrator may make and give notice of an assessment of the amount of tax owed by a person under this section at any time:

1. If the person has not filed a complete statement required under the provisions of this section;
2. If the person has not paid the tax due under the provisions of this section;
3. If the person has not, after demand by the Tax Administrator, filed a corrected statement, or furnished to the Tax Administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this section; or
4. If the Tax Administrator determines that the nonpayment of any cannabis business tax due under this section is due to fraud, a penalty of twenty-five percent (25%)

of the amount of the tax shall be added thereto in addition to penalties and interest otherwise payable under this section and any other penalties allowed by law.

B. The notice of assessment shall separately set forth the amount of any tax known by the Tax Administrator to be due or estimated by the Tax Administrator, after consideration of all information within the Tax Administrator's knowledge concerning the business and activities of the person assessed, to be due under each applicable provision of this section and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment

**5.38.240 Tax assessment - notice requirements.**

The notice of assessment shall be served upon the person either by personal delivery, by overnight delivery by a nationally-recognized courier service, 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 Tax Administrator for the purpose of receiving notices provided under this section; or, should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purpose of Section 5.38.240, a service by overnight delivery shall be deemed to have occurred one (1) calendar day following deposit with a courier and service by mail shall be deemed to have occurred three (3) days following deposit in the United States mail.

**5.38.250 Tax assessment - hearing, application and determination.**

Within thirty (30) calendar days after the date of service of the notice of assessment the person may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Tax Administrator shall become final and conclusive. Within thirty (30) calendar days of the receipt of any such application for hearing, the Tax Administrator shall cause the matter to be set for hearing before him or her no later than thirty (30) calendar days after the receipt of the application, unless a later date is agreed to by the Tax Administrator and the person requesting the hearing. Notice of such hearing shall be given by the Tax Administrator to the person requesting such hearing not later than five (5) calendar days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Administrator should not be confirmed and fixed as the tax due. After such hearing the Tax Administrator shall determine and reassess (if necessary) the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 5.38.240 for giving notice of assessment.

**5.38.260 Relief from taxes - disaster relief.**

A. If a cannabis business is unable to comply with any tax requirement imposed under this section due to a disaster, the business may notify the Tax Administrator of its inability to comply and request relief from the tax requirement. For purposes of this section, "disaster" means fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes.

B. The cannabis business shall provide any information required by the Tax Administrator including, without limitation, why relief is requested, the time period for which the relief is requested, and the reason relief is needed for the specific amount of time. The cannabis

business agrees to grant the Tax Administrator or his/her designee access to the location where the cannabis business has been impacted due to a disaster.

C. The Tax Administrator, in his/her sole discretion, may provide relief from the cannabis business tax requirement for businesses whose operations have been impacted by a disaster if such tax relief does not exceed ten thousand (\$10,000) dollars. Such temporary relief may be granted for a reasonable amount of time, in the Tax Administrator's sole discretion, and the amount and duration of relief should be based upon how long it would reasonably take for the cannabis business to recover from the disaster. The Tax Administrator may require that the cannabis business follow certain conditions to receive temporary relief from the cannabis business tax requirement.

**5.38.270 Conviction for violation - taxes not waived.**

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this section or of any state law requiring the payment of all taxes.

**5.38.280 Violation deemed misdemeanor.**

Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

**5.38.290 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.

**5.38.300 Remedies cumulative.**

All remedies and penalties prescribed by this chapter or which are available under any other provision of this code and any other provision of law or equity are cumulative. 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 of this chapter.

**5.38.310 Amendment or modification.**

Except as set forth in this section 5.38.310, this chapter may be amended or modified but not repealed by the City Council without a vote of the people. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would expand, extend, or increase the rate of any tax levied pursuant to this chapter. The people of the City of Sonoma affirm that the following actions shall not constitute an increase of the rate of a tax:

A. The restoration or adjustment of the rate of the tax to a rate that is no higher than that allowed by this chapter, in those circumstances where, among others, the City Council has previously acted to reduce the rate of the tax or is incrementally implementing an increase authorized by this chapter;

B. An action that interprets or clarifies (i) the methodology of applying or calculating the tax or (ii) any definition applicable to the tax, so long as the interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the provisions of this Chapter 5.38; 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. ELECTION.** An election shall be ordered to enable the voters of the City of Sonoma to approve or reject this ordinance. The date of the election shall be November 3, 2020.

**SECTION 3. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The people of the City of Sonoma hereby declare that they would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

**SECTION 4. ENVIRONMENTAL COMPLIANCE.** The findings establishing that this Ordinance is in compliance with the California Environmental Quality Act (“CEQA”) are the same as those set forth in the City Council’s Resolution # 31-2020 calling for an election on this Ordinance. The CEQA findings in Resolution # 31-2020 are incorporated herein by this reference.

**SECTION 5. PUBLICATION.** The City Clerk is hereby directed to publish this ordinance at least once, within fifteen (15) days of its adoption in a newspaper of general circulation public and circulated in the City of Sonoma.

This Ordinance relates to the levying and collecting of the City’s cannabis business tax. The City Council, by no less than a 2/3 vote of the Council by adopting Resolution # 31-2020, approved submission of this Ordinance to the voters at an election to be held on November 3, 2020. Upon approval by a majority of the voters of the City, and upon adoption of a resolution declaring the election results, the Mayor shall hereby be authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

This Ordinance shall take effect immediately after the date of its passage and adoption.

\_\_\_\_\_  
Logan Harvey, Mayor

ATTEST:

\_\_\_\_\_  
Rebekah Barr, MMC, City Clerk

Ordinance # \_\_\_\_ was submitted to the People of the City of Sonoma at the November 3, 2020 general municipal election. It was approved by the following vote of the People:

YES:

NO:

ATTEST:

\_\_\_\_\_  
Rebekah Barr, MMC, City Clerk