

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF CHULA VISTA ADDING  
CHAPTER 5.21, "CANNABIS BUSINESS TAX," TO TITLE 5  
OF THE CHULA VISTA MUNICIPAL CODE TO ESTABLISH  
A TAX ON CANNABIS BUSINESS ACTIVITY

WHEREAS, the Adult Use of Marijuana Act (AUMA), adopted by the voters of the State of California in November 2016, decriminalized non-medical cannabis and established a regulatory system for non-medical cannabis businesses in California; and

WHEREAS, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), enacted by the California State Legislature in June 2017, established a comprehensive set of laws regulating both individual and commercial medicinal and non-medical cannabis activity throughout the State of California; and

WHEREAS, under California Business and Professions Code section 26200(a)(1), local jurisdictions are authorized to either permit and regulate or prohibit the operation of cannabis businesses within their boundaries; and

WHEREAS, the City of Chula Vista has experienced the negative impacts and secondary effects associated with the operation of unlawful cannabis businesses within its corporate boundaries; and

WHEREAS, in response to changes in California law, after considerable public debate and evaluation of the pros and cons of allowing commercial cannabis business activity in the City, the City decided to license, and regulate commercial cannabis activity in the City; and

WHEREAS, the City implemented this decision by drafting and approving a comprehensive licensing and regulatory system for commercial, including retail recreational, cannabis activity pursuant to the terms of Ordinance No. 3418, adopted by the City Council on March 6, 2018 and codified as Chula Vista Municipal Code Chapter 5.19 ("Cannabis Licensing Ordinance"); and

WHEREAS, the legal effectiveness of the Cannabis Licensing Ordinance was made expressly contingent upon the City's adoption of a business license tax on commercial cannabis business activity; and

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

WHEREAS, the City of Chula Vista may, and does, impose license taxes on businesses in the City for general purposes, pursuant to its home-rule authority and the City Charter;

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

WHEREAS, if approved by the voters, the revenues from the tax imposed by this ordinance will be used to fund enforcement efforts against illegal cannabis businesses in the City, as well as other general government purposes.

NOW, THEREFORE, subject to approval by a simple-majority vote of the electorate as required by law, the People of the City of Chula Vista do ordain as follows:

SECTION 1. The Chula Vista Municipal Code is hereby amended to add chapter 5.21, as set forth below, enacting a tax on the privilege of conducting business relating to cannabis in the City of Chula Vista.

### Chapter 5.21

### CANNABIS BUSINESS TAX

#### Sections

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5.21.010 TITLE.

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

5.21.020 EFFECTIVE DATE.

This ordinance shall take effect ten days after the certification of its approval by voters at the November 6, 2018 election, pursuant to Elections Code section 9217.

5.21.030 PURPOSE.

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

- A. Impose a tax on the privilege of conducting the following activities within the City's jurisdiction: cultivating, transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, donating, selling, or distributing Cannabis or Cannabis Products by commercial Cannabis Businesses in the City of Chula Vista, pursuant to the State Medicinal and Adult-Use Cannabis Regulation and Safety Act (California Business and Professions Code sections 26000, *et seq.*), as it now exists or may be amended from time-to-time, and local law, whether or not conducted in compliance with such laws;
- B. Impose a general tax that generates revenue that may be used for any lawful purpose of the City, in the discretion of the City Council;
- C. Specify the type of tax and rate of tax to be levied and the method of collection; and
- D. Comply with all requirements for imposition of a general tax.

This chapter is enacted solely to raise revenue and not for regulation. It shall apply to all Persons engaged in Cannabis Business in the City. The tax imposed by this chapter is a general tax under Articles XIII A and XIII C of the California Constitution.

This chapter does not authorize the conduct of any business or activity in the City, but provides for the taxation of such businesses or activities as they occur. Neither the imposition of such tax by the City nor the payment of such tax by the taxpayer shall imply that the activity being taxed is lawful.

This chapter shall apply to each Cannabis Business in the City, whether or not such business has a permit or license issued pursuant to the City of Chula Vista Municipal Code.

5.21.040 DEFINITIONS.

The following definitions shall apply to the construction of this chapter unless the context is such that it is plain that a different meaning is intended:

- A. "Adult-Use Cannabis" shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.
- B. "Cannabis" shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.
- C. "Cannabis Accessory" is any device intended to aid in the use of Cannabis or Cannabis Products which does not itself consist in all or part of Cannabis or Cannabis Products, and includes "Cannabis Products" as defined in Health and Safety Code section 11018.2, and by other state and local law.

D. "Cannabis Business" means the activity of any natural or legal Person, business, or collective in the City relating to Cannabis, including but not limited to Cultivation (including Cannabis Nurseries), Transportation, Distribution, Manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, Delivery and Sales (wholesale and/or retail sales) of Cannabis, Cannabis Products, or any accessories for the use of Cannabis or Cannabis Products, whether or not carried on for gain or profit, whether for medical or recreational use, and whether or not such business is licensed by the State. A Cannabis Business does not include any business the only relationship of which to Cannabis or Cannabis Products is the production or Sale of Cannabis Accessories.

E. "Cannabis Nursery" means a facility or part of a facility that is used for production of clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and Cultivation of Cannabis.

F. "Cannabis Product" shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.

G. "Canopy" shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.

H. "City" means the City of Chula Vista.

I. "City Attorney" means the City Attorney of the City of Chula Vista, or designee.

J. "City Manager" means the City Manager of the City of Chula Vista, or designee.

K. "Commercial Cannabis Cultivation" means Cultivation conducted by, for, or as part of a Cannabis Business. Commercial Cannabis Cultivation does not include Cultivation for personal adult-use as authorized under the MAUCRSA, for which the individual receives no compensation whatsoever. Commercial Cannabis Cultivation also excludes Cannabis Nursery businesses.

L. "Cultivation" shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time -to-time.

M. "Cultivator" shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.

N. "Delivery" shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.

O. "Director of Finance" means the Director of Finance of the City of Chula Vista.

P. "Distribution" shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.

Q. "Gross Receipts" means the following: (1) the total amount of consideration actually received or receivable from all Sales; (2) the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature, for

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

1. Cash discounts allowed and taken on Sales.
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "Gross Receipts";
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or Purchaser;
4. Such part of the Sale price of property returned by Purchasers upon rescission of a contract of Sale as is refunded either in cash or by credit;
5. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded;
6. Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the administrator with the names and addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustee;
7. Cash value of Sales, trades or transactions between departments or units of the same business;
8. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities, and gains from the Sale or exchange of stock or securities solely for a Person's own account, not derived in the ordinary course of business;
9. 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;
10. 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;
11. Transactions between a partnership and its partners;
12. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection 10., above; and
13. Receipts from services or Sales in transaction between affiliated corporations; an affiliated corporation is defined as a corporation:
  - a. Which owns at least eighty percent of the voting and non-voting stock of such other corporation; or

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

As to any Person engaged in the business of manufacturing or processing any goods, wares, merchandise, article or commodity at a fixed place of business within the City which does not generate Gross Receipts as defined herein within the City, Gross Receipts shall be deemed to include the total of all expenses incurred in the manufacturing or processing of such goods at the business location within the City for payroll, utilities, depreciation, and/or rent.

As to any Person engaged in the business of operating an administrative headquarters at a fixed place of business within the City who does not have Gross Receipts as defined herein within the City, Gross Receipts shall be deemed to include the total gross payroll of all Persons employed at such administrative headquarters.

R. “Manufacture” shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.

S. “Operation” shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.

T. “Owner” shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.

U. “Person” shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.

V. “Purchaser” shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.

W. “Sale” and “Sell” shall have the meaning shall have the meaning ascribed to them in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.

X. “State” shall mean the State of California.

Y. “Transport” shall have the meaning ascribed to it in Chula Vista Municipal Code Chapter 5.19, as may be amended from time-to-time.

#### 5.21.050 CANNABIS BUSINESS TAX.

- A. There is hereby imposed on every Cannabis Business in the City, excluding Commercial Cannabis Cultivation, an annual tax at a rate to be established from time-to-time by ordinance or resolution of the City Council. The tax for all Cannabis Businesses, excluding Commercial Cannabis Cultivation businesses, shall be imposed

with respect to the Gross Receipts of such businesses within the range of five percent (5%), up to a maximum of fifteen percent (15%), of the business' Gross Receipts. The tax imposed under this section shall be due and payable as provided in section 5.21.120. The tax upon Commercial Cannabis Cultivation businesses, shall be imposed as provided in Section 5.21.060, below.

- B. The City Council may by resolution, in its discretion, implement a tax rate lower than the maximum rate established in subsection A. of this section for all Persons engaged in a Cannabis Business in the City, or establish differing tax rates for different categories of Cannabis Business. The City Council may, by resolution, also decrease or increase any such tax rate from time to time, provided that the tax rate shall not, at any time, be below the minimum, or above the maximum, tax rates established in subsection A. of this section.
- C. Cannabis Businesses subject to the tax imposed by subsections A. and B. of this section shall also register and pay the registration fee described in section 5.21.070, and shall comply with Chula Vista Municipal Code chapter 5.19, except that they shall be exempt from paying the general business tax imposed by Chapter 5.04. Any Cannabis Business not subject to the tax imposed by subsections A. and B. of this section is subject to the general business tax imposed by Chapter 5.04, except as otherwise provided by this Code, including section 5.21.060, below, or other applicable law.

5.21.060 CANNABIS CULTIVATION TAX.

- A. There is hereby imposed on every Cannabis Business engaged in Commercial Cannabis Cultivation in the City, an annual tax in an amount established from time-to-time by ordinance or resolution of the City Council. The tax for all Commercial Cannabis Cultivation Businesses shall be in the range of \$10 to \$25 per square foot of Canopy, or fraction thereof. These maximum square foot tax rates shall be adjusted annually (and rounded up to the nearest cent) each January 1<sup>st</sup> based on the year-over-year percentage change in the Bureau of Labor Statistics San Diego Metropolitan Area Consumer Price Index for All Urban Consumers (CPI-U) October to October comparison, or if such index is discontinued, a comparable or successor consumer price index designated by the City Council. The tax imposed by this section shall be due and payable in installments as provided in section 5.21.120, below.
- B. Every Commercial Cannabis Cultivation business shall pay: (i) the Cultivation tax imposed by this section, instead of the tax imposed by section 5.21.050, on its Cultivation activity and (ii) the tax imposed by section 5.21.050 on any and all of its other Cannabis Business activities. The activity of Cannabis Nurseries as defined in section 5.21.040, above, is subject to the tax imposed by section 5.21.050 rather than the tax imposed by this section.
- C. The City Council may, by resolution, in its discretion, implement a tax rate lower than the maximum rate set forth in subsection A. of this section for all businesses engaged in Commercial Cannabis Cultivation in the City or establish tax rates for categories of Commercial Cannabis Cultivation. The City Council may, by resolution, also decrease or increase any such tax rate from time to time, provided that the tax rate shall not, at

any time, be below the minimum, or above the maximum, rates established in subsection A. of this section.

- D. Cannabis Businesses engaged in Cultivation and subject to the tax imposed by subsections A. and B. of this section and liable for the tax imposed by this chapter shall also register and pay the registration fee described in section 5.21.070, and shall comply with Chula Vista Municipal Code chapter 5.19, except that they shall be exempt from paying the general business tax imposed by Chapter 5.04. Any Cannabis Business engaged in Cultivation not subject to the tax imposed by subsections A. and B. of this section is subject to the general business tax imposed by Chapter 5.04, except as otherwise provided by this Code, including section 5.21.050, above, or other applicable law.

#### 5.21.070 REGISTRATION OF CANNABIS BUSINESSES.

A. All Persons engaging in a Cannabis Business, whether an existing, newly-established or acquired business, shall register with the City Manager's office by the later of (i) 30 days prior to commencing Operation or (ii) by January 1, 2019 and shall annually renew such registration no less frequently than one calendar year after the date of the most recent registration. In registering, such Persons shall furnish to the City Manager a sworn statement, upon a form provided by the City Manager, setting forth the following information:

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

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

C. The tax registration form and the application required under Chapter 5.19 of this Code may constitute a single document.

#### 5.21.080 PAYMENT OBLIGATION.

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

#### 5.21.090 TAX PAYMENT DOES NOT AUTHORIZE ACTIVITY.

The payment of a tax imposed under this chapter shall not be construed to authorize the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter authorizes or implies the lawfulness of any activity connected with the Distribution or possession of Cannabis unless otherwise authorized and allowed in strict and full conformance with this Code, including without limitation chapter 5.19. Nothing in this chapter shall be applied or construed as authorizing the Sale, Cultivation (including Cannabis Nurseries), Transportation, Distribution, Manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, Delivery and Sale (wholesale and/or retail sales) of Cannabis, Cannabis Products, or any accessories for the use of recreational Cannabis or Cannabis Products.

#### 5.21.100 CANNABIS TAX IS NOT A SALES TAX.

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

#### 5.21.110 AMENDMENTS, RATE ADJUSTMENTS, AND ADMINISTRATION.

- A. Voters approved this chapter. Any amendment to this chapter to increase the taxes above the maximum rates, or decrease them below the minimum rates, provided by this chapter requires further voter approval. The voters authorize the City Council to set the taxes at or below the applicable maximums, and at or above the applicable minimums, or otherwise to amend, modify, change, or revise any provision of this chapter as the City Council deems in the best interest of the City. In addition, the City Council may establish exemptions, incentives, or other reductions, and penalties and interest charges or assessments for failure to pay the tax when due, as otherwise allowed by the City Charter, the City's Municipal Code, and State law. No action by the City Council under this section shall prevent it from later adjusting the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax authorized by this chapter, within the ranges specified in sections 5.21.050 and 5.21.060 and provided that the Council's action does not otherwise constitute a tax "increase" within the meaning of Government Code section 53750, subdivision (h).
- B. The City Manager, in consultation with the City Attorney, may adopt administrative policies to promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the taxes imposed by this chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the taxes as provided. Such policies shall be: (i) effective upon the date specified in the policy; (ii) signed by the City Manager and City Attorney; and (iii) posted on the City website by the City Clerk prior to implementation.
- C. The City Manager shall annually audit the Cannabis taxes imposed by this chapter to verify that tax revenues have been properly collected and expended in accordance with the law.

- D. Pursuant to California Constitution, article XIII B, the appropriation limit for the City is increased to the maximum extent over the maximum period of time allowed under law to allow expenditure of all revenues generated by the taxes and fees imposed or authorized by this chapter.

#### 5.21.120 RETURNS AND REMITTANCES.

The taxes imposed by this chapter shall be due and payable as follows:

- A. Each Cannabis Business owing tax under this chapter shall provide a tax return to the City Manager within thirty days following the last day of each month, stating the tax owed for that month, and the basis of its calculation. The taxpayer shall remit the tax owed to the City Manager when the return is due whether or not a return is filed as required.
- B. The tax for Commercial Cannabis Cultivation imposed by this Chapter shall be paid, in arrears, on a quarterly basis. The tax due for each calendar quarter shall be based on the square footage of the business's Canopy space during the quarter and the rate shall be 25% of the applicable annual rate.
- C. All tax returns shall be completed on forms provided by the City Manager.
- D. Tax returns and payments for all outstanding taxes, fees, penalties and interest owed the City are immediately due upon cessation of business for any reason.
- E. Whenever any payment, statement, report, request or other communication is received by the City Manager after the time prescribed by this chapter for its receipt, but is in an envelope postmarked on or before the date prescribed by this section for its receipt, the City Manager shall regard such payment, statement, report, request, or other communication as timely. If the due date falls on Saturday, Sunday, or another day when the City is not open for business, the due date shall be the last earlier business day on which City Hall is open to the public.
- F. Unless otherwise specifically provided by this chapter, the taxes imposed by this chapter shall be deemed delinquent if not paid on or before the due date specified in subsection A. of this section.
- G. The City Manager may, but 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.

#### 5.21.130 FAILURE TO PAY TIMELY.

- A. Any Person who fails or refuses to pay any tax or fee imposed by this chapter when due shall pay penalties and interest as follows:
  - 1. A penalty equal to 10 percent of the tax or fee, in addition to the amount of the tax; and

2. An additional penalty equal to 25 percent of the amount of the tax or fee if unpaid for more than a month beyond the due date; and
  3. Interest charges on the amount of any and all unpaid taxes, fees, or penalties at the rate of one percent interest per month from the date due until paid. Interest shall be applied at the rate of one percent per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.
- B. If a check is submitted in payment of a tax or fee and is returned unpaid by the bank upon which drawn, and the check is not redeemed before the due date, the taxpayer will be liable for the tax or fee due plus penalties and interest as provided for in this section plus any amount allowed under State law for the returned check.
- C. The tax due shall be that amount due and payable from the later of (i) the effective date of the taxes under this chapter as determined by resolution of the City Council or (ii) the first date on which the Cannabis Business first operated in the City.
- D. The City Manager may waive some or all of the penalties imposed by this section as to any Person if:
1. The Person provides evidence satisfactory to the City Manager that failure to pay timely was due to circumstances beyond the control of the Person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the Person paid the delinquent tax or fee and accrued interest owed the City upon applying for a waiver.
  2. A waiver authorized by this subsection shall not apply to tax, fee or interest and may be granted to a taxpayer only once during any 24-month period.

#### 5.21.140 REFUNDS.

- A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in this section.
- B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of a Cannabis Business.
- C. Any Person entitled to a refund of sums paid under this chapter may elect to have such refund applied as a credit against future obligations under this chapter.
- D. Whenever any tax, fee, penalty, or interest under this chapter has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City, such amount shall be refunded to the Person who paid the tax upon a timely written claim for refund filed with the City Manager.
- E. The City Manager may examine and audit all the books and business records of the claimant to determine eligibility to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of the claimant's books and

business records. Claims for refund shall be filed in accordance with chapter 1.34 of this code.

- F. A sum erroneously paid under this chapter due to an error of the City shall be refunded to the claimant in full upon a timely claim. If an error is attributable to the claimant, the City may retain an amount established by ordinance or resolution of the City Council from time-to-time in an amount sufficient to recover the City's cost to process the claim and refund the balance.
- G. The City Manager shall initiate a refund of any sum overpaid or erroneously collected under this chapter whenever the overpayment or erroneous collection is disclosed by a City audit for the period of time for which a timely claim might then be filed under the Government Claims Act.

#### 5.21.150 ENFORCEMENT.

- A. The City Manager shall enforce this chapter.
- B. The City Manager may audit and examine all business locations, books and records of Cannabis Businesses, including both State and federal income tax returns, California sales tax returns, or other evidence documenting the Gross Receipts of a Cannabis Business to ascertain any tax due under this chapter and to verify any returns or other information any Person submits to the City under this chapter. If a Cannabis Business, after written demand by the City Manager, refuses to make available for audit, examination or verification such locations, books, and records as the City Manager requests, the City Manager may, after full consideration of all such information as is available make an assessment of the tax or fee due and demand payment from the tax- or fee-payer, together with any penalties and interest due for late payment.
- C. The criminal conviction and punishment of any Person for failure to pay a sum required under this chapter shall not excuse or exempt such Person from any civil action for the debt. No civil action shall prevent a criminal prosecution for any violation of this chapter or of any State law requiring the payment of all taxes. No election of remedies shall apply to the enforcement of this chapter or any other provision of this Code and the City may pursue one or more remedies in its discretion provided only that no double recovery shall be permitted.
- D. Any Person violating any of the provisions of this chapter or any regulation or rule adopted pursuant to it, or knowingly or intentionally misrepresenting any material fact to the City in procuring a certificate or document from the City under this chapter, or under chapter 5.19, shall be guilty of a misdemeanor unless the City Attorney, in his or her discretion, elects to prosecute it as an infraction in the interests of justice.
- E. In addition to the penalty imposed for a failure to timely pay any tax or fee imposed by this chapter, pursuant to Section 5.21.130, the City's Director of Finance shall have the discretion to issue an administrative citation with respect to said failure, and impose an

administrative fine in the amount of \$2,000 for each month that any payment of tax is overdue. Each Cannabis Business subject to any such administrative citation and fine shall have the opportunity to appeal same pursuant to the process set forth in Section 5.19.050 of this Code.

- F. In the event that any appeal as to an administrative citation and fine pursuant to this Section 5.21.150, or any other action in relation thereto takes place, the prevailing party shall be entitled to recover its attorneys' fees and, if the City prevails, administrative costs incurred.

#### 5.21.160 CONSISTENCY WITH BUSINESS TAX RULES.

The People of the City of Chula Vista intend this chapter to be enforced consistently with Chapter 5.04, of this Code and any rule or regulation promulgated under that Title except as expressly provided to the contrary in this chapter.

#### 5.21.170 SUCCESSOR AND ASSIGNEE RESPONSIBILITY.

- A. If any Person, while liable for any amount under this chapter, sells, assigns or otherwise transfers half or more of a taxed Cannabis Business, whether voluntarily or involuntarily, the Person's successor, assignee or other transferee, or other Person or entity obtaining ownership or control of the business ("transferee") shall pay that amount when due. A transferee shall notify the Director of Finance of a transfer 30 days before the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business is made less than 30 days before the date of transfer, on the first day the City is open for business after the transfer.
- B. A transferee shall be deemed to have satisfied an unpaid liability if the transferee complies with the requirements of California Revenue and Taxation Code Section 7283.5 and this section by withholding from the purchase price, for the benefit of the City, an amount sufficient to cover the liability, or by otherwise paying the liability and obtaining from the Director of Finance a "Tax Clearance Certificate" showing that all outstanding liability has been paid through the date of transfer.
- C. Within 90 days of receiving a written request from a transferee, the Director of Finance may issue a "Tax Clearance Certificate" stating either the amount due as to the business under this chapter, or stating that there is no liability due for the business through a stated date. The Director of Finance may also request financial records from the transferor to audit the amount due under this chapter. The Director of Finance shall issue a tax clearance certificate within 30 days of completing the audit, stating any amount owed, unless the Director of Finance determines the records provided for audit are insufficient to determine whether taxes, fees, penalties and/or interest are due and in what amounts. If so, the Director of Finance may rely on available information to estimate any amount due and shall issue a tax clearance certificate stating that amount. A written application for an appeal hearing on the amount assessed on a tax clearance certificate must be made within 10 days after the Director of Finance serves or mails the certificate. The appeal provision of Section 5.19.050 of this Code shall apply. If a timely application for a hearing is not made, the tax clearance certificate shall serve as

conclusive evidence of the liability under this chapter associated with the business through the date stated on the certificate.

#### 5.21.180 DEBTS, DEFICIENCIES AND ASSESSMENTS.

- A. The amount of any tax, fee, penalties, and interest imposed by this chapter shall be deemed a debt to the City and any Person operating a Cannabis Business without first having procured a business license(s) and paid all requisite business license taxes, as provided in this Chapter and Chapter 5.19 shall be liable in an action in the name of the City in any court of competent jurisdiction for the amount due.
- B. If no return or statement is timely filed, or if the City Manager is not satisfied that any return or other statement filed under this chapter is correct, or that the amount due is correctly computed, the City Manager may determine that amount and make a deficiency determination upon available information. The City Manager may make one or more deficiency determinations for a period or periods. When a Person discontinues engaging in a business, the City Manager may make a deficiency determination at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued before the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the Person concerned as are notices of assessment under subsections C, D, and E of this section.
- C. Under any of the following circumstances, the City Manager may make and give notice of an assessment of taxes, fees, penalties and interest owed under this chapter:
  1. If the Person has not filed any statement or return required by this chapter;
  2. If the Person has not paid any tax, fee, penalty or interest due under this chapter;
  3. If the Person has not, after demand by the City filed a corrected statement or return, or adequate substantiation of the information contained in a statement or return previously filed, or paid any additional amount due under this chapter;
  4. If the City Manager determines nonpayment of any amount due under this chapter or Chapter 5.04 is due to fraud, a penalty of 25 percent of the amount of otherwise due shall be added thereto in addition to penalties and interest otherwise stated in this chapter.
  5. The notice of assessment shall separately set forth any amount the City Manager knows or estimates to be due under this chapter, including any penalties or interest accrued to the date of the notice.
  6. A notice of assessment shall be served upon the tax- or fee-payer either by personal service or by a deposit in the United States mail, postage prepaid, addressed to the address appearing on the City License issued under Chapter 5.19,

or such other address as a tax- or fee-payer may provide the City Manager in writing for notices under this chapter or Chapter 5.19; or, should the Person have no business tax certificate issued and no address provided to the City Manager for such purpose, then to such Person's last known address. Service by mail is complete upon deposit in the United States mail as provided in this paragraph. If no address is known, notice may be given by posting at or near the location of the business.

- D. Within 10 days after service of a notice of assessment, the tax- or fee-payer may apply in writing to the City Manager for a hearing on the assessment. If no timely application for a hearing is made, the amount assessed shall be final and conclusive. Within 30 days of the receipt of an application for hearing, the City Manager shall cause the matter to be set for an administrative hearing pursuant to chapter 1.40 of this code. The City Manager shall give notice of such hearing to the Person requesting it not later than five days before the hearing. At such hearing, the applicant may appear and offer evidence why the assessment should not be confirmed. After such hearing, the hearing officer shall determine the amount due under this chapter and shall give written notice to the Person as prescribed in this chapter for giving notice of assessment. That decision is final as to the City, but either the City or the appellant may seek judicial review as provided by California Code of Civil Procedure section 1094.5.

#### 5.21.190 APPORTIONMENT

A. No tax imposed by this chapter shall be applied so as to occasion an undue burden upon interstate commerce or violate the equal protection and due process clauses of the Constitutions of the United States or the State of California or otherwise exceed the City's lawful authority.

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

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

D. The City Manager may require the taxpayer to submit a sworn statement of the Gross Receipts, Canopy size, or other data required to calculate the tax and to pay the amount of tax as determined by the City Manager.

SECTION 2. AMENDMENT. To the extent authorized by Article XIII C of the California Constitution, this ordinance may be amended by the City Council without a vote of the People. Voter approval is required for any amendment that would increase, within the meaning of Government Code section 53750(h), beyond the maximum rates, or decrease the rates below the minimum rates, authorized by this Ordinance.

SECTION 3. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The People hereby declare that they would have adopted this Ordinance and each portion thereof regardless of the fact that an invalid portion or portions may have been present in the Ordinance.

SECTION 4. CEQA. This measure to be submitted to the voters adopts a general tax to fund any legitimate purpose of the City. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment. Therefore, under CEQA Guidelines section 15060, review under CEQA is not required.

SECTION 5. EFFECTIVE DATE. This Ordinance relates to the levying and collecting of the City's Cannabis tax and shall not take effect until ten days after the certification of its approval by the majority of the voters voting at the general municipal election to be held on November 6, 2018 pursuant to Elections Code section 9217.

SECTION 6. CERTIFICATION; PUBLICATION. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.