

RESOLUTION NO. RES-2017-035

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA (1) ORDERING A SPECIAL ELECTION TO BE HELD ON TUESDAY, JUNE 6, 2017 FOR THE PURPOSE OF SUBMITTING TO SANTA ROSA VOTERS AN ORDINANCE OF THE CITY OF SANTA ROSA ADDING CHAPTER 6-10 TO THE SANTA ROSA CITY CODE AND AMENDING CHAPTER 6-04 OF THE SANTA ROSA CITY CODE TO IMPOSE A CANNABIS INDUSTRY TAX ON CANNABIS BUSINESSES OPERATING IN SANTA ROSA, (2) APPROVING BALLOT LANGUAGE, (3) PERMITTING THE FILING OF BALLOT ARGUMENTS, (4) DIRECTING THE CITY ATTORNEY TO PROVIDE AN IMPARTIAL ANALYSIS, AND (5) SETTING INITIAL TAX RATES FOR A 2-YEAR TERM

WHEREAS, the City of Santa Rosa has responsibly and proactively managed its finances and its taxpayer dollars through transparent budget and decision-making processes and recently enacted Measures O and N to ensure the City's fiscal stability by updating budget formulas and extend locally-enacted funding; and

WHEREAS, on November 5, 1996, the California voters enacted Proposition 215 to legalize medical use of cannabis, and in October 2015, the Governor signed into law the Medical Marijuana Regulation and Safety Act (now known as the Medical Cannabis Regulation and Safety Act or MCRSA), establishing a state licensing framework and authorizing local regulation of the medical cannabis industry; and

WHEREAS, for the past year, the City of Santa Rosa's Medical Cannabis Policy Subcommittee has been working with cannabis industry stakeholders to develop comprehensive policies to regulate those in the medical cannabis industry in a way that supports region's small, locally-operated providers without overburdening that new market; and

WHEREAS, as these policy discussions continue, on November 8, 2016, California voters enacted Proposition 64 to legalize adult recreational use of cannabis and to allow businesses that support such cannabis use to operate legally, subject to regulations imposed by state and local public entities; and

WHEREAS, the permitting and support of this industry, in association with the earlier passage of Proposition 215, and the recent enactment of MCRSA and passage of Proposition 64, has significant cost implications for the City of Santa Rosa due to the substantial costs to the City of adopting and implementing regulations to govern this new industry, enforcing those regulations, ensuring public safety, addressing environmental concerns, providing economic development services, and providing other related services, totaling over \$1,000,000 annually; and

WHEREAS, the City must identify a funding source to support regulation of the industry while not adversely impacting the general fund in order to maintain consistent funding and financial stability for essential services such as police and fire protection, 911 emergency response times, streets and road maintenance, affordable housing, gang prevention, recreational programs and other general city services; and

WHEREAS, the City's existing general business tax ordinance, which generally levies a limited business tax on all businesses operating in Santa Rosa, is insufficient to generate the

volume of revenue needed to pay the City's costs of allowing the new and unique cannabis industry to operate in Santa Rosa; and

WHEREAS, nearly 50 other California jurisdictions – typically in collaboration with cannabis businesses – have enacted local measures to impose a general tax on cannabis business for the privilege of operating within the local jurisdiction; and

WHEREAS, such business taxes are imposed on cannabis businesses, and not directly on cannabis users or consumers; and

WHEREAS, adopting such a local cannabis industry business tax measure in the City of Santa Rosa will benefit residents of the City by ensuring that cannabis businesses contribute reasonably and fairly to paying for the costs associated with allowing this emerging industry to operate in Santa Rosa while allowing the City to continue to maintain stable funding for essential City services and continued quality of life; and

WHEREAS, the City recognizes the volatility of the newly-legalized cannabis market and will therefor set limited initial tax rates to balance the financial needs of the City and the desire of the City to support and encourage the industry to engage in the regulated market; and

WHEREAS, such a measure will provide locally-controlled revenue that cannot be taken by the State; and

WHEREAS, such a measure will help to maintain the City's long-term financial stability, with public oversight and annual fiscal reviews; and

WHEREAS, the City of Santa Rosa wishes to continue its policy engagement and discussions with stakeholders and the public about how cannabis businesses operating in Santa Rosa should be regulated, while acting quickly and decisively to address any significant financial disruptions or impact to the City's General Fund and provision of services to Santa Rosa citizens; and

WHEREAS, the City Council desires to consolidate the election regarding the adoption of an Ordinance authorizing the imposition of a cannabis industry tax on cannabis business with the other elections to be conducted by the Sonoma County Registrar of Voters on the established election date of June 6, 2017.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Santa Rosa hereby resolves:

1. Pursuant to California Elections Code sections 1000 and 1400, and Government Code sections 53723 and 53724, a Special Municipal Election of the City of Santa Rosa is ordered and shall be held in the City of Santa Rosa, California, on Tuesday, the 6<sup>th</sup> day of June 2017 for the purposed of submitting to the qualified voters of the City an ordinance entitled "AN ORDINANCE OF THE VOTERS OF THE CITY OF SANTA ROSA, STATE OF CALIFORNIA, ADDING CHAPTER 6-10 TO THE SANTA ROSA CITY CODE AND AMENDING CHAPTER 6-04 OF THE SANTA ROSA CITY CODE TO IMPOSE A CANNABIS INDUSTRY TAX ON

CANNABIS BUSINESSES OPERATING IN SANTA ROSA” in the form attached hereto as Exhibit A, which is incorporated by this reference as if fully set forth herein. The full text of the provisions of the Ordinance submitted to the voters shall be available to any member of the public in the Office of the Registrar of Voters.

2. The proposed Ordinance shall be submitted to the voters in the form of a measure entitled “Santa Rosa Cannabis Industry Tax Measure” and printed on the ballot as follows:

<p>Shall an ordinance be adopted authorizing a cannabis business tax in the City of Santa Rosa on cultivation businesses up to \$25 per square foot of cultivation area (annually adjusted by CPI) or 8% of gross receipts, and on cannabis manufacturing, distribution and dispensary businesses up to 8% of gross receipts, to maintain general funds for City services and to address cannabis industry impacts, with all funds subject to audits and staying local, generating undetermined revenue until repealed?</p>	<p>Yes</p> <hr style="width: 50%; margin: 0 auto;"/>	<p>No</p> <hr style="width: 50%; margin: 0 auto;"/>
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3. Pursuant to California Elections Code section 10403, the Board of Supervisors of the County of Sonoma is hereby requested to consent and agree to the consolidation of the Special Municipal Election with the elections to be conducted on the established election day of Tuesday, June 6, 2017, for the purpose of submitting the Ordinance to voters for approval and for election services to be provided by the County Elections Department in conducting the Special Municipal Election. The vote requirement for the Ordinance’s passage is a majority of votes cast.
4. The City Council recognizes that the consolidated election will be conducted in the manner prescribed by the Elections Code section 10418. The County Elections Department is authorized to canvass the returns of the Special Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.
5. The Board of Supervisors is requested to issue any necessary instructions to the County Elections Department to take any and all steps necessary for the holding of the consolidated election, and the City Clerk is authorized and directed to work with the County Elections Department as necessary and appropriate.
6. The City of Santa Rosa recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

7. The City Attorney's impartial analysis of and written arguments for and against the proposed measure shall be prepared in accordance with the Charter of the City of Santa Rosa and the California Elections Code.
8. The City Clerk shall certify to the passage of this resolution and cause this resolution to be published in the manner provided by law, and shall file a certified copy of this resolution with the Clerk of the Board of Supervisors of Sonoma County and the Registrar of Voters of Sonoma County promptly upon its adoption.
9. Arguments for and against the proposition may be submitted to the qualified voters of the City in accordance with sections 9282 through 9287 of the California Elections Code. The deadline date for submitting ballot arguments for or against the proposition shall be set by the City Clerk. Proposed arguments shall not exceed 300 words and shall be submitted to the Office of the City Clerk. The deadline for submitting rebuttal arguments shall be set by the City Clerk. Proposed rebuttal arguments shall not exceed 250 words and shall be submitted to the office of the City Clerk. The provisions of Section 9285(a) of the California Elections Code shall apply to the submittal of rebuttal arguments.
10. Initial cannabis business tax rates, should the proposed ballot initiative pass on June 6, 2017, shall be set as follows for a term of 2 years beginning the day the Ordinance goes into effect:
  - a. Cultivation Initial Rate: 2% of gross receipts or \$5.00 per square foot of cannabis cultivation area, at the taxpayer's election
  - b. Manufacturing Initial Rate: 1% of gross receipts
  - c. Distribution Initial Rate: 0% (instead subject to standard city business tax under Santa Rosa City Code Chapter 6-04)
  - d. Dispensaries: 3% of gross receipts (recreational only and only after state and local regulations are in place)

IN COUNCIL DULY PASSED on this 7th day of March, 2017.

AYES: (6) Mayor Coursey, Vice Mayor Tibbetts, Council Members Combs, Olivares, Rogers, Schwedhelm

NOES: (0)

ABSENT: (1) Council Member Sawyer

ABSTAIN: (0)

ORDINANCE OF THE VOTERS OF THE CITY OF SANTA ROSA, STATE OF CALIFORNIA, ADDING CHAPTER 6-10 TO THE SANTA ROSA CITY CODE AND AMENDING CHAPTER 6-04 OF THE SANTA ROSA CITY CODE TO IMPOSE A CANNABIS INDUSTRY TAX ON CANNABIS BUSINESSES OPERATING IN SANTA ROSA

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

**Section 1. Chapter 6-10 is hereby added to the Santa Rosa City Code to read as follows:**

**“CHAPTER 6-10 CANNABIS INDUSTRY TAX**

**6-10.010. Title.** This ordinance shall be known as the Cannabis Industry Tax Ordinance.

**6-10.020. General Excise Tax.** The cannabis industry tax is enacted solely to raise revenue and not to regulate cannabis activity; regulation of that activity remains the province of the City Council. The cannabis industry tax is an excise tax on the privilege of engaging in cannabis business activity in the City; it is not a sales or use tax. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and used for general governmental purposes.

**6-10.030. Purpose.** This ordinance is adopted to achieve the following purposes, among others, and shall be interpreted to accomplish those purposes:

- A. To impose an excise tax on businesses engaged in the cannabis industry operating within the City of Santa Rosa pursuant to the state Medical Cannabis Regulation and Safety Act (specifically California Business and Professions Code section 19348), the "California Control, Regulate and Tax Adult Use of Marijuana Initiative" approved by the state's voters on November 8, 2016, and/or any other enabling legislation, or in violation of such legislation, and notwithstanding whether such state laws use the term "marijuana" or "cannabis;" and
- B. To specify the type of tax and maximum rate of tax that may be levied and the method of collection; and
- C. To comply with all requirements to impose a general excise tax, such tax to become operative only if and to the extent implemented by the City Council by resolution.

**6-10.040. Definitions.** Terms that are not defined in this Chapter shall have the meanings ascribed to them in Section 20-70 of the Santa Rosa City Code. The following words and phrases shall have the meanings set forth below when used in this Chapter unless the context plainly requires otherwise:

- A. "Business" means "Business" as that term is defined in Section 6-04.010 of the Santa Rosa City Code.
- B. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972, and amended by the California Control, Regulate and Tax Adult Use of Marijuana Initiative, and as defined by other applicable state law.
- C. "Cannabis business" or "cannabis industry" means any business activity in the City relating to cannabis, including but not limited to cultivation (including nurseries), transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, delivery and sales (wholesale and/or retail sales) of cannabis or cannabis products, whether or not carried on for gain or profit. A cannabis business does not include any business whose only relationship to cannabis or cannabis products is the production or sale of cannabis accessories.
- D. "Cannabis cultivation area" means the total aggregate area(s) of cannabis cultivation by a cannabis business as measured around the outermost perimeter of each separate and discrete area of cannabis cultivation at the dripline of the canopy expected at maturity and includes, but is not limited to, the space between plants within the cultivation area, the exterior dimensions of garden beds, garden plots, hoop houses, green houses, and each room or area where cannabis plants are grown, excluding non-production areas, as determined by the Director of Planning and Economic Development or his or her designee.
- E. "Cannabis industry tax" means the tax due pursuant to this Chapter for engaging in cannabis business in the City.
- F. "Cannabis product" means any product containing cannabis, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles and those products described in Section 11018.1 of the Health and Safety Code.
- G. "Canopy" means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether the areas are contiguous or noncontiguous. The plant canopy need not be contained to a single parcel of land in determining the total square footage that will be subject to tax under this Chapter.
- H. "City" means the City of Santa Rosa, either the entity or its territorial limits, as the context requires.
- I. "City Council" or "Council" means the City Council of the City of Santa Rosa.
- J. "Collector" means the City's Chief Financial Officer or his or her designee.

- K. "Commercial cannabis cultivation" means cultivation conducted by, for, or as part of a cannabis business. Commercial cannabis cultivation does not include personal medical cannabis cultivation, or cultivation for personal recreational use as authorized under the "California Control, Regulate and Tax Adult Use of Marijuana Initiative" approved by the state's voters on November 8, 2016, for which the individual receives no compensation whatsoever.
- L. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. "Cultivation" also includes nurseries. In addition, and without limiting the foregoing, "cultivation" includes "cultivation" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted and amended from time to time.
- M. "Dispensary" means a facility where cannabis or cannabis products, are offered, either individually or in combination, for retail sale, including an establishment that engages in delivery of cannabis or cannabis products as part of a retail sale. In addition, and without limiting the foregoing, "dispensary" includes "dispensary" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time.
- N. "Distributor" means a person engaged in procuring cannabis from a cultivator, and/or procuring cannabis products from a manufacturer, for sale to a dispensary. In addition, and without limiting the foregoing, "distributor" includes "distributor" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time. "Distribution" means engaging in that conduct and a "distribution facility" is any real estate, whether or not improved, used in such conduct.
- O. "Employee" means each and every person engaged in the operation or conduct of any cannabis business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such cannabis business for a wage, salary, commission, barter or any other form of compensation.
- P. "Evidence of doing business" means "Evidence of doing Business" as that term is defined in Section 6-04.060 of the Santa Rosa City Code.
- Q. "Gross Receipts," means "Gross Receipts" as that term is defined in Section 6-04.010 of the Santa Rosa City Code.
- R. "Manufacturer" means a person who conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or that packages or repackages cannabis or cannabis products or labels or re-labels its container. In addition, and without

limiting the foregoing, “manufacturer” includes “manufacturer” as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time.

- S. "Nursery" means a person who produces cannabis clones, immature plants, and/or seeds for wholesale distribution, used specifically for the planting, propagation, and cultivation of cannabis. In addition, and without limiting the foregoing, “nursery” includes “nursery” as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time.
- T. "Person" means “Person” as that term is defined in Section 6-04.010 of the Santa Rosa City Code.
- U. "Personal medical cannabis cultivation" means cultivation, by either a qualified patient who cultivates cannabis exclusively for his or her personal medical use or by a caregiver who cultivates cannabis exclusively for medical use by qualified patients and who is exempt from State licensing requirements under the state Medical Cannabis Regulation and Safety Act.
- V. "Sale" means “Sale” as that term is defined in Section 6-04.010 of the Santa Rosa City Code.
- W. "State" means the State of California.
- X. "State license," means a state license issued pursuant to California Business & Professions Code Sections 19300, et seq. or other applicable state law.

**6-10.050. Tax Authorized.** A cannabis industry tax is hereby imposed on every person who is engaged in cannabis business in the City as prescribed herein, from and after the effective date of a City Council resolution implementing the tax. It is unlawful for any person to transact or carry on any cannabis business in the City without paying, in accordance with this Chapter, the cannabis industry tax imposed by this section.

A. Tax on Commercial Cannabis Cultivation

- 1. There is hereby imposed on every person engaged in commercial cannabis cultivation in the City, an annual tax at a rate established by resolution of the City Council which rate shall not exceed either \$25 per square foot of cannabis cultivation area or eight percent (8%) of annual gross receipts. The maximum square foot tax shall be adjusted annually each January 1<sup>st</sup> based on the year-over-year percentage change in Bureau of Labor Statistics San Francisco/Oakland/San Jose Consumer Price Index – All Urban Consumers (CPI-U) October to October comparison, or if such index is discontinued, a comparable successor consumer price index as determined by the City Council. The tax imposed under this Subsection (A)(1) shall be due and payable in installments as provided in Section 6-

10.070 of this Chapter. The tax imposed under this Subsection (A)(1) shall not be implemented unless and until the City Council acts by resolution to do so.

2. The City Council may by resolution, in its discretion, implement a tax rate lower than the maximum rates set forth in Subsection (A)(1) for all persons engaged in commercial cannabis cultivation in the City or establish differing tax rates for different categories of commercial cannabis cultivation. For example, and without limitation, the City Council may set different tax rates for cannabis cultivation for medical or adult recreational use, or for indoor rather than outdoor or mixed light 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, exceed the maximum tax rates established in Subsection (A)(1). An affirmative vote of at least five (5) members of the City Council is required for any tax increase resulting in a tax rate of over 5%. Tax rates shall be set for a minimum of a two (2) year term.
3. Persons subject to the tax imposed by Subsections (A)(1) and (A)(2) shall also register and pay the registration fee described in Section 6-10.060 of this Chapter, but shall be exempt from paying the general business tax required under Section 6-04.220 and 6-04.230 of the Santa Rosa City Code for any such cannabis business. A cannabis business not subject to the cannabis industry tax imposed by this Chapter is subject to the general business tax required under Sections 6-04.220 and 6-04.230 of the Santa Rosa City Code except as otherwise provided by Chapter 6-04 of this Code or other applicable law.

**B. Tax on Cannabis Manufacturers, Distributors, and Dispensaries**

1. There is hereby imposed on every person engaged in a cannabis business in the City as a manufacturer, distributor or a dispensary an annual tax at a rate established by resolution of the City Council which rate shall not exceed eight percent (8%) of annual gross receipts. The tax imposed under this Subsection (B)(1) shall be due and payable in installments as provided in Section 6-10.070 of this Chapter. The tax imposed under this Subsection (B)(1) shall not be implemented unless and until the City Council acts by resolution to do so.
2. The City Council may by resolution, in its discretion, implement a tax rate lower than the maximum rate established in Subsection (B)(1) for all persons engaged in a cannabis business in the City as a manufacturer, distributor or a dispensary, or establish differing tax rates for different categories of cannabis business. For example, and without limitation, the City Council may set different rates for businesses serving medical or adult recreational use, or for different types of manufacturers, distributors

or dispensaries. The City Council may, by resolution, also decrease or increase any such tax rate from time to time, provided that the tax rate shall not, at any time, exceed the maximum tax rate established in Subsection (B)(1). An affirmative vote of at least five (5) members of the City Council is required for any tax increase resulting in a tax rate of over 5%. Tax rates shall be set for a minimum of a two (2) year term.

3. Persons subject to the tax imposed by Subsections (B)(1) and (B)(2) shall also register and pay the registration fee described in Section 6-10.060 of this Chapter, but shall be exempt from paying the general business tax required under Section 6-04.220 and 6-04.230 of the Santa Rosa City Code for any such cannabis business. A cannabis business not subject to the cannabis industry tax imposed by this Chapter is subject to the general business tax required under Sections 6-04.220 and 6-04.230 of the Santa Rosa City Code except as otherwise provided by Chapter 6-04 of this Code or other applicable law.

- C. No further voter approval shall be required for the adoption or increase of a tax under the authority granted by this Section 6.10.050 of this Chapter, it being the intent of the People of the City of Santa Rosa to authorize such a tax up to and including the maximum rates set forth above whenever implemented by the City Council hereafter.

**6-10.060. Registration of Cannabis Business.** All cannabis businesses shall be required to annually register as follows:

- A. All persons engaging in a cannabis business, whether an existing, newly-established or acquired business, shall register with the Collector within thirty (30) days of commencing operation or by July 31, 2017, whichever is later, and shall annually renew such registration by January 1 of each year thereafter. In registering, such persons shall furnish to the Collector a sworn statement, upon a form provided by the Collector, setting forth the following information:
  - (1) The name of the business
  - (2) The names and addresses of each owner
  - (3) The exact nature or kind of business;
  - (4) The place where such business is to be carried on; and
  - (5) Any further information which the Collector may require.
- B. Any financial information required under Subsection A will be used only to calculate and enforce the tax imposed under this Chapter, will be exempt from disclosure under the Public Records Act pursuant to Government Code section 6254(i), and will not be used by the City for criminal enforcement except as provided in Sections 6-10.270 and 6-10.280 of this Chapter.
- C. An annual registration fee of \$100 shall be presented with the sworn statement submitted under this section. This fee shall not be considered a tax and may be adjusted by resolution of the City Council.

- D. Unless otherwise specifically provided by the Collector in writing, the annual fee under this section shall be due and payable in advance, on the first day of January, and shall be considered delinquent if unpaid after the last day of February. The date on which the fee becomes delinquent may be extended in writing by the Collector, upon good cause shown, to a date not later than March 31st.
- E. For failure to pay the fee under this section when due, a penalty of 15 percent shall be added to the fee.
- F. For failure to pay the fee under this section when due, interest on the delinquent fee (exclusive of penalty) at the rate of .84 percent per month shall be added to the fee for each month or portion of a month that fee, penalty and/or interest is not paid.
- G. For each cannabis business subject to tax under this Chapter, a separate registration and fee payment shall be required under this section for each branch or location of the business and for each separate type of cannabis business at each branch or location.
- H. Upon receipt of the registration and fee required under this Section, the Collector shall issue to the cannabis business a Certificate of Registration. Such Certificate of Registration shall be non-transferrable except as otherwise provided by the Collector in writing.

**6-10.070. Reporting and Remittance of Tax.** The cannabis industry tax imposed by this Chapter shall be due and payable as follows:

- A. Each person subject to tax under this chapter, except a cannabis cultivation tax based on a square footage, shall, on or before the last day of the month following the close of each calendar quarter, prepare and submit a tax return and remit to the Collector the tax due for that quarter. At the time the return is filed, the full amount of the tax due for the prior quarter shall be remitted to the Collector. At any time, a business may apply in writing to the Collector to have these tax returns and payments made less frequently or on a different schedule. Any determination resulting from this application will be at the sole discretion of the Collector and shall be provided in writing.
- B. Each person subject to a cannabis cultivation tax based on a square footage shall, on or before the last day of the month following the close of each calendar quarter, prepare and submit a tax return and remit to the Collector the tax due for that quarter. The tax shall be calculated in accordance with rules and regulations established by the Collector pursuant to Section 6-10.160. The tax return may include a request for adjustment of the tax due to crop loss or periods without cultivation, along with evidence substantiating the crop loss or fallow periods. If the cultivation begins significantly after January 1 or terminates significantly before December 31 of the calendar year, a request to prorate the tax may be submitted with evidence supporting the timing of the cultivation. The decision to prorate or adjust the tax will be made at the sole discretion of the Collector. At the time the return is filed, the full amount of the tax due for the prior quarter shall be remitted to the Collector. At any time, a business may apply in writing to the Collector to have these tax returns and payments made less frequently or on a different schedule. Any

determination resulting from this application will be at the sole discretion of the Collector and shall be provided in writing.

- C. All tax returns shall be completed on forms prescribed by the Collector.
- D. Tax returns and payments for all outstanding taxes owed the City under this Chapter are immediately due and payable to the City of Santa Rosa upon cessation of business for any reason.

**6-10.080. Payments and Communications – Timely Remittance.** Whenever any payment, return, report, request or other communication is due under this Chapter, it must be received by the Collector on or before the due date. A postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday or a City holiday, the due date shall be the next regular business day on which the City is open to the public.

**6-10.090. Payment – When Taxes Deemed Delinquent.** Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the City of Santa Rosa on or before the due date as specified in Section 6-10.070.

**6-10.100. Notice Not Required By City.** The City of Santa Rosa is not required to send a delinquency or other notice or bill to any person subject to this Chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty or interest due under this Chapter.

**6-10.110. Delinquent Taxes – Penalties and Interest.** Penalties and interest shall be applied according to Section 6-04.200 of the Santa Rosa City Code.

**6-10.120. Waiver of Penalties.** The Collector may waive the penalties imposed upon any person if:

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

**6-10.130. Refunds.** Refunds may be paid pursuant to Section 6-04.210 of this Code.

**6-10.140. Exemptions from the Tax.**

- A. Nothing in this Chapter shall be deemed or construed to apply to any person transacting and carrying on any business that is exempt from the payment of such taxes as are herein

prescribed by virtue of the Constitution or applicable statutes of the United States or of the State.

- B. Any person claiming an exemption pursuant to this Section shall file a sworn statement with the Collector stating the facts upon which exemption is claimed. Unless and until the Collector determines in writing that such person is exempt from tax under this Chapter, such person shall be liable for the payment of the tax imposed by this Chapter.
- C. This Chapter shall not be deemed or construed to require the payment of any general business tax under Chapter 6-04 of the Santa Rosa City Code for any cannabis business that is subject to payment of a cannabis industry tax under this Chapter.

**6-10.150. Enforcement.** It shall be the duty of the Collector to enforce each and all of the provisions of this Chapter, in accordance with the procedures of Section 6-04.270 of this Code.

**6-10.160. Rules and Regulations.** The Collector may adopt rules and regulations not inconsistent with the provisions of this Chapter as may be necessary or desirable to aid in the implementation and enforcement of the provisions of this Chapter. A copy of any such rules and regulations shall be available for public inspection in the Collector's office.

**6-10.170. Apportionment.** If a cannabis business subject to a cannabis industry tax is operating both within and outside the City, it is the intent of the City to apply the cannabis industry tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the City. The Collector may adopt administrative procedures for apportionment pursuant to section 6-10.160 of this Chapter.

**6-10.180. Construction.**

- A. This tax is intended to be applied in a manner consistent with the United States and California Constitutions, state and local law. None of the tax provided for by this Chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution, state or local law.
- B. This Chapter shall be construed and implemented consistent with the provisions of Chapter 6-04 of this Code except as this Chapter or other law otherwise requires or the Collector otherwise determines in writing as authorized under this Code.

**6-10.190. Audit and Examination of Records and Equipment.**

- A. The Collector shall have the power to audit and examine all books and records of any person engaged in cannabis business in the City, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in cannabis business, and, where necessary, all equipment of any person engaged in cannabis business in the City, for the purpose of ascertaining the

amount of cannabis industry tax, if any, required to be paid under this Chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this Chapter. If such person, after written demand by the Collector, refuses to make available for audit, examination or verification such books, records or equipment as the Collector requests, the Collector may, after full consideration of all information within his or her knowledge concerning the cannabis business and activities of the person so refusing, make an assessment against the cannabis business of the taxes estimated to be due under this Chapter, following the procedures set forth in Section 3-28.120 of the Santa Rosa City Code.

- B. It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the Collector shall have the right to inspect at all reasonable times.

**6-10.200. Other Licenses, Permits, Taxes, Fees, or Charges.** Except as expressly provided in this Chapter, nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other title or Chapter of this Code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or Chapter of this Code or any other ordinance or resolution of the City. Any references made or contained in any other title or Chapter of this Code to any permits, licenses, taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the permits, licenses, taxes, fees or charges, or schedule of license fees, provided for in other titles or Chapters of the Santa Rosa City Code unless otherwise expressly provided.

**6-10.210. Successor's and Assignee's Responsibility.**

- A. If any person, while liable for any amount under this Chapter, sells, assigns or otherwise transfers the 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 satisfy any tax liability owed to the City associated with the business when due hereunder. Failure to do so for the benefit of the City will result in being personally liable to the City for the full amount of the unpaid tax liability, interest and penalties. The Transferee shall notify the Collector of the date of transfer at least 30 days before the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business was made less than 30 days before the date of transfer, notice shall be provided immediately upon the existence of the agreement.
- B. The Transferee shall be deemed to have complied with the requirement of this section to satisfy the unpaid tax liability if the Transferee complies with the requirements of California Revenue and Taxation Code Section 7283.5 by withholding from the purchase price, for the benefit of the City, an amount sufficient to cover the tax liability, or by otherwise paying the tax liability and obtaining from the Collector a "Tax Clearance

Certificate” showing that all outstanding tax liability has been paid and stating that no amount is due through the date of transfer.

- C. The Collector, within 90 days of receiving a written request from a Transferee, may issue a “Tax Clearance Certificate” stating either the amount of tax liability due and owing for the business, or stating that there is no tax liability due and owing for the business through a stated date. The Collector may also request financial records from the current or former owner or operator to audit the tax that may be due and owing. The Collector shall issue a Tax Clearance Certificate within 30 days of completing the audit, stating the amount of the tax liability owed, if any, unless the Collector determines that the records provided in connection with the audit are insufficient to determine whether taxes are due and owed or in what amount. If the Collector determines that the records are insufficient, the Collector may rely on the facts and information available to estimate any tax liability. The Collector may issue a Tax Clearance Certificate stating the amount of the tax liability, if any, based on such facts and information available. Unless an appeal is filed in accordance with Section 6-10.260, the Tax Clearance Certificate shall serve as conclusive evidence of the tax liability associated with the property through the date stated on the certificate.

**6-10.220. Payment of Tax Does Not Authorize Unlawful Business.**

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

**6-10.230. Deficiency Determinations.** If the Collector is not satisfied that any tax return or other statement filed as required under this Chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the facts contained in the tax return or statement or any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable, or such later date as allowable by law. 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 business, a deficiency determination may be made at any time within three (3) years thereafter, or such later date as allowable by law, as to any liability arising from engaging in such 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 6-10.250.

**6-10.240. Failure to Report – Nonpayment.**

- A. Under any of the following circumstances and at any time, the Collector may make and give notice of an assessment of the amount of tax owed by a person under this Chapter:
1. If the person has not filed a complete return or statement required under this Chapter;
  2. If the person has not timely paid any tax, fee, interest and/or penalties due under of this Chapter; or
  3. If the person has not, after demand by the Collector, filed a corrected return or statement, or furnished to the Collector adequate substantiation of the information contained in a return or statement filed previously.
- B. The notice of assessment shall separately set forth the amount of any tax, fee, interest and/or penalties known by the Collector to be due or estimated by the Collector, after consideration of all information within the Collector's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Chapter.

**6-10.250. Tax Assessment – Notice Requirements.** The notice of assessment shall be served upon the person liable for the tax under this Chapter either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Collector for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Collector for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

**6-10.260. Appeal Procedure.** Any taxpayer aggrieved by any decision of the Collector with respect to the amount of tax, fee, interest and penalties, if any, due under this Chapter may appeal to the City Manager by filing a written appeal with the Clerk of the Santa Rosa City Council within fifteen (15) calendar days of the mailing of the decision or determination. The Clerk shall schedule the appeal and give fifteen (15) days' written notice to the appellant of the time and place of hearing by serving the notice personally or by depositing in the United States Post Office in the City, postage prepaid, addressed as shown on the appeal papers or, if none, such other address as is known to the City or, absent any address, by publication in a newspaper of general circulation in the City. The City Manager shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of this Chapter.

**6-10.270. Conviction for Chapter Violation – Taxes not Waived.** The conviction and punishment of any person for failure to pay a required tax, fee, penalty and/or interest under this Chapter shall not excuse or exempt such person from any civil action for the amounts due under this Chapter. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

**6-10.280. Violation Deemed Misdemeanor.** Any person who violates any provision of this Chapter or who other than by a sworn statement, knowingly or intentionally misrepresents to any officer or employee of the City any material fact herein required to be provided is guilty of a misdemeanor punishable as provided in section 1-28.010 of this Code. A person who on a sworn statement states as true a material fact that he or she knows to be false is guilty of perjury.

**6-10.290. Actions to Collect.** The amount of any tax, fee, penalty and/or interest imposed pursuant to this Chapter shall be deemed a debt owed to the City. An action may be commenced in the name of the City in any court of competent jurisdiction, for the amount of any delinquent tax, fees, penalties and interest thereon.

**6-10.300. 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.

**6-10.310. Remedies Cumulative.** All remedies prescribed under this Chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

**6-10.320. Amendment or Repeal.** This Chapter may be repealed or amended by ordinance of the Santa Rosa City Council without a vote of the People except that, as required by Article XIIC of the California Constitution, any amendment that increases the maximum rates of tax beyond the levels authorized in Section 6-10.050 above shall not take effect unless approved by a vote of the People. The City Council may, by resolution, implement a tax under this Chapter in any amount or at any rate that does not exceed the maximum rates set forth in Section 6-10.050.”

**Section 2. Chapter 6-04 of the Santa Rosa City Code is hereby amended as follows:**

- A. The title of Chapter 6-04 is amended to read as follows: “**General Business Tax.**”
- B. Section 6-04.010 is amended to add “(I) Cannabis Industry Tax. As used in this Chapter, "cannabis industry tax" means any tax due pursuant to Chapter 6-10 of this Code.”
- C. Section 6-04.030 (A) is amended to read as follows: “(A) Except as provided in Subsection (D), persons required to pay a tax for transacting and carrying on any business under this Chapter shall not be relieved from the payment of any license tax, permit, charge, assessment, or fee for the privilege of doing such business required under other laws or regulations of the City, and shall remain subject to the provisions of such other laws and regulations.”
- D. Section 6-04.030 is amended to add “(D) Persons required to pay a tax pursuant to Chapter 6-10 of this Code shall also register the cannabis business pursuant to Section

6-10.060 of this Code, but shall be exempt from the general business tax required under this Chapter for any such cannabis business.”

- E. Section 6-04.080 is amended to add “(F) The provisions of this Chapter shall not be deemed or construed to require the payment of any general business tax by any person required to pay a tax under Chapter 6-10 of this Code.”
- F. Section 6-04.270 is amended to read as follows: “It shall be the duty of the Collector to enforce each and all of the provisions of this chapter, and the Santa Rosa Police and Santa Rosa City Code Enforcement Officers shall render such assistance in the enforcement hereof as may be required by the Collector or the City Manager or his or her designee.

At the direction of the Collector, the Collector’s assistants and any City Police or Code Enforcement Officer shall have the power and authority to enter free of charge, at any reasonable time, any place of business within the City to request to see its business tax certificate. Any person having such certificate in his or her possession or under his or her control who fails to exhibit the same upon such a request, shall be guilty of a misdemeanor punishable pursuant to section 1-28.010 of this Code.”

- G. Section 6-04.340 is added to read: “**6-04.340 Amendment or Repeal.** This Chapter may be amended or repealed by the City Council without a vote of the People except that, as required by Article XIII C of the California Constitution, any amendment that increases the amount or rate of tax beyond the levels authorized under Sections 6-04.220 and 6-04.230 under this Chapter may not take effect unless approved by a vote of the People.”

**Section 3. CEQA.** The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). The cannabis industry tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action nor does it authorize any private activity, but merely taxes such activity as otherwise occurs. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax are used for a purpose that would have either such effect, the City will undertake the required CEQA review for that project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required at this time.

**Section 4. Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The People of the City of Santa Rosa hereby declare that they would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**Section 5. Effective and Operative Dates.** This ordinance shall take effect 10 days after the election result is certified as provided by Elections Code but the taxes imposed by this ordinance shall take effect only when and to the extent implemented by resolution of the City Council.

**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.

This ordinance was introduced by the Council of the City of Santa Rosa on \_\_\_\_\_, 2017.

IN COUNCIL DULY PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_ APPROVED: \_\_\_\_\_  
City Clerk Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Interim City Attorney